



GENERAL SERVICE TERMS

1. GENERAL

These general terms of service ("**General Terms**") apply to the provision of all services provided by BFI Pay / Paysoft ("**BFI Pay / Paysoft**", "**we**", or "**us**" as the context may require) to our clients ("**Client**", "**you**" or "**your**" as the context may require) from time to time (the "**Services**").

Before you register to become a Client, you must read, agree with, and accept all of the terms and conditions contained in these General Terms, read with your signed and accepted application form "**Application Form**", the individual service terms applicable to the Services you wish to register for ("**Service Terms**"), and our Privacy Policy.

These General Terms, the relevant Service Terms, and our Privacy Policy and any provisions set out in the relevant Application Form (whether in hardcopy or electronic format) constitutes a legal contract (collectively, the "**Agreement**") between you and Paysoft.

The Agreement will become legally binding when we confirm in writing that your application has been accepted by us. **By completing the application process, and submitting your completed Application Form, you are regarded as having read and agreed to all the terms of these General Terms, the relevant Service Terms, and our Privacy Policy, including the parts in bold which may have important consequences to you.** If you do not agree to be bound by the terms and conditions of these General Terms, our Privacy Policy, or relevant Service Terms, you should not subscribe for our Services.

2. DEFINITIONS AND INTERPRETATION

2.1. In this Agreement:

"**Affiliate**" means, in relation to any party, any entity in the same group as that party, including but not limited to a subsidiary or a holding company of that party and any direct or indirect subsidiaries of such holding company.

"**Agreement**" means these General Terms, the Service Terms, the Privacy Policy and the Application Form, together with all annexures, amendments, modifications, extensions and revisions thereof.

"**Applicable Law**" means any and all applicable provisions in any jurisdiction, of statutes, laws, rules, codes, treaties, ordinances, directives, directions, injunctions, awards and/or regulations, including that from any court, governmental, intergovernmental, supranational authority or self-regulatory organisation, and including (binding and non-binding) requests, guidelines or decisions from regulators or associations as amended and re-enacted from time to time.

"**Application Form**" means the form detailing the Client information, the selected Services and the Fees, and signed by the Parties (as it may be updated and supplemented by the Parties in writing from time to time).

"**Business Day**" means a day other than a Saturday or a Sunday or public holiday in South Africa.

"**Client Bank Account**" means a bank account in the Client's own name, so the Client can

receive payments from, and make payments to, Paysoft.

"**Confidential Information**" means any and all written, oral visual, machine readable or other tangible or intangible form of information (whether patentable or copyrightable or not), data, techniques, plans, strategies, opportunities or trade secrets which is not generally available to the public as disclosed or delivered by either Party (the "**Disclosing Party**") to the other Party ("**Receiving Party**") whether before or after the date of this Agreement.

"**Customer**" means a customer or potential customer of the Client in relation to any information verification and/or payment transaction processed using the Services (a customer may include employees or staff of the Client).

"**Customer Data**" means Data relating to Customers that (a) the Client provides to BFI Pay / Paysoft in connection with the Services (including personal data); or (b) BFI Pay / Paysoft generates on the basis of that data.

"**Data**" means documents, records and any other data of any kind relating to the transactions.

"**Designated User**" means the representative authorised by the Client, as set out in the Application Form.

"**Fees**" means all fees, charges and other payments to be made by the Client to BFI Pay / Paysoft for the Services, as set out on the Application Form.

"**Fines**" means any and all fines, levies, costs, expenses, charges, assessments or imposition of liabilities of any nature which a financial institution requires either the Client or BFI Pay / Paysoft to pay or which are otherwise directly or indirectly recovered from BFI Pay / Paysoft at any time and which relate to any aspect of this Agreement (including the provision of the Services hereunder).

"**Further Guidance**" means any and all internal or external documents, guidance, policies and processes outlined or issued by BFI Pay / Paysoft in relation to the Services.

"**PASA**" means the Payment Association of South Africa.

"**PASA Rules**" means any and all applicable rules, regulations, standards and operating guidelines issued by PASA, from time to time.

"**Portal**" means the online, access controlled portal in which the Client can view its account, access and use the Services, make payment instructions, update details and view reports.

"**Services**" means the Services offered by BFI Pay / Paysoft as defined in clause 4 of these General Terms, as read with the Application Form.

"**VAT**" means value added tax, or any equivalent sales tax.

2.2. Unless a contrary indication appears any reference in this Agreement to:

2.2.1. any reference to "**including**" and "**include**" shall mean including and include "without limitation"; and

2.2.2. the singular or plural shall each be deemed to include the other unless the context otherwise indicates.

2.3. Except as otherwise expressly worded herein, and as required (but not permitted) by Applicable Law, a person who is not a Party to this Agreement has no right to enforce or to enjoy the benefit of any term of this Agreement.

2.4. The terms of this Agreement have been negotiated by the Parties and drafted for the

benefit of the Parties. Accordingly, any rule in terms of which an agreement will be interpreted against the Party responsible for the drafting and preparation of the agreement will not apply in the interpretation of this Agreement.

- 2.5. In the event of a conflict between these General Terms, any Service Terms, and the Application Form, then these General Terms shall prevail.
- 2.6. The Agreement constitutes the entire agreement between the Parties in respect of the Services and supersedes any such previous agreement, whether express or implied.

3. COMMENCEMENT

- 3.1 Upon acceptance of this Agreement, BFI Pay / Paysoft or our authorised supplier will issue your Designated User with access and passcodes to the Client Portal.
- 3.2 Following the issue of such passcodes, we deem all subsequent activities conducted or instructed by you as being properly authorised and binding.
- 3.3 You are responsible for maintaining your data in the Client Portal. You shall submit relevant Customer Data to us according to the specified processing dates, times and methods for the specific services.

4 OUR SERVICES

- 4.1 BFI Pay / Paysoft offers the following Services (as agreed in the Application Form), certain of which are subject to the additional Service Terms as indicated:
 - 4.1.1 Payments via Electronic Fund Transfer (EFT);
 - 4.1.2 Collections via Debit Payment Processing (debit orders);
 - 4.1.3 Verification (Account Holder Verification, Identity Verification, Check Digit Verification);
 - 4.1.4 "Quickscore" credit service;
 - 4.1.5 "Quicktrace" tracing service;
 - 4.1.6 such other services as BFI Pay / Paysoft may offer from time to time.
- 4.2 BFI Pay / Paysoft will provide the Services, as applicable, with reasonable skill and care, in accordance with and for the duration of this Agreement. Services will be provided in accordance with Applicable Law.
- 4.3 BFI Pay / Paysoft may cancel, suspend or modify one, some or all of the Services without prior notice and with immediate effect if BFI Pay / Paysoft, in its reasonable opinion, considers it necessary or desirable to do so. BFI Pay / Paysoft will notify the Client as soon as possible of any such cancellation, suspension or modification.
- 4.4 In providing payment services, BFI Pay / Paysoft acts as a "system operator" as contemplated by the National Payment Systems Act of 1998 (the "**NPS Act**"). This means that BFI Pay / Paysoft is obliged to:
 - 4.4.1 retain all records obtained during the course of providing payment services for such period required under the NPS Act and any other relevant legislation;
 - 4.4.2 treat the information of each Client as confidential, including the information relating to any transactions of the Client, subject to any lawful request for the disclosure;

- 4.4.3 provide you with the information you require in respect of the transactions processed by us in performing the Services; and
 - 4.4.4 supply information regarding a Client to the South African Reserve Bank or PASA, as may be lawfully requested by either of them (other than information relating to your payers, such as names and account numbers).
- 4.5 In order to ensure continuance compliance with the requirements of PASA and Applicable Law, the Client understands and accepts that BFI Pay / Paysoft provides its Services subject to the written approvals, directives, notices or authorisations as may be issued by PASA directly to BFI Pay / Paysoft from time to time. The Client further accepts that BFI Pay / Paysoft may make any such changes to the Services or this Agreement as are strictly necessary to ensure compliance with Applicable Law and PASA and the continuous provision of the Services to the Client.
- 4.6 Despite the variety of Services available to you, you understand and agree:
- 4.6.1 We are not a bank and do not offer banking or financial services. Any online banking facilities available through use of our Services creates legal rights and obligations between you and such banks or, between your customers and such banks;
 - 4.6.2 we are not a remittance business or a money transfer service;
 - 4.6.3 in respect of payment Services, we act as the payment processor in respect of any transaction between you and your customer;
 - 4.6.4 we only process transactions in accordance with your instructions and direction which, in turn, may require us to perform certain tasks on your behalf;
 - 4.6.5 our Services are subject to the terms and conditions imposed by the banks and other third party service providers.

5 RIGHTS AND OBLIGATIONS OF THE CLIENT

- 5.1 The Client shall comply with Applicable Law to which it is subject and use the Services for lawful purposes. The Client shall not act in contravention of or cause BFI Pay / Paysoft to act in contravention of any Applicable Laws to which BFI Pay / Paysoft is subject.
- 5.2 The Client shall pay the Fees to BFI Pay / Paysoft in accordance with clause 6 below.
- 5.3 **You understand that by accessing our Services that are made available to you in the Portal, you are solely responsible and liable for when using the Services in the Portal for ensuring the data entered is correct.**
- 5.4 **You are also responsible for ensuring that the authorised individuals within your organisation are given appropriate access to the Portal (either viewing, authorisation or uploading status). Should an individual leave your organisation, you are responsible for terminating their access to the Portal and requesting new login information from us.**
- 5.5 The Client shall only –
 - 5.5.1 Use the verification or vetting services in respect of its Customers where it has the legal right to do so (and provide us with any proof thereof as we may require from time to time);

- 5.5.2 accept payments and/or process refunds to Customers in connection with goods and/or services supplied to the Customers;
- 5.5.3 make payments to Customers where such customers are owed monies by the Client in the ordinary course of its business (including pursuant to an employment relationship).
- 5.6 The Client shall, at all relevant times, maintain the Client Bank Account.
- 5.7 Where it has been agreed that BFI Pay / Paysoft may debit a Client Bank Account, the Client shall:
 - 5.7.1 maintain with their bank an instruction to authorise all such debits and/or provide BFI Pay / Paysoft with any necessary mandate or authority; and
 - 5.7.2 put funds in the Client Bank Account, as BFI Pay / Paysoft may in good faith consider necessary.
- 5.8 While BFI Pay / Paysoft may provide installation guides, the Client remains solely responsible for ensuring the correct implementation, installation, integration, security and operation of all systems, equipment, software and telecommunications and use of the Services on its own platform.
- 5.9 The Client shall in no way make or allow to be made any copy of any documentation, computer programmes or other proprietary information which BFI Pay / Paysoft may make available to the Client, save with BFI Pay / Paysoft's prior written consent.
- 5.10 The Client shall provide immediate notice of (i) any unauthorised third party use of the Services; and/or (ii) any event that might lead to such unauthorised use.
- 5.11 The Client shall take all reasonable steps to assist BFI Pay / Paysoft in handling any claim or query raised by any other third party in relation to the Services.
- 5.12 The Client shall immediately notify BFI Pay / Paysoft of any act, omission or error which does or may adversely affect the Client's ability to perform their obligations under this Agreement or cause loss or damage to BFI Pay / Paysoft (including but not limited to any material change in the nature or extent of the Client's business).
- 5.13 The Client shall immediately notify BFI Pay / Paysoft on becoming aware of any actual or suspected security breach relating to any Data. As soon as reasonably practicable, the Client shall identify and remediate the source of such security breach and take any additional steps required by BFI Pay / Paysoft. This clause shall not prejudice any other remedies available to BFI Pay / Paysoft under this Agreement.
- 5.14 The Client shall comply with any additional security, authentication, risk control or other requirements imposed by BFI Pay / Paysoft, including but not limited to where that Client is, in the opinion of BFI Pay / Paysoft, engaged in high risk activities.

6 SERVICE FEES AND CHARGES

- 6.1 **Fees and Charges:** The Fees are described in the relevant Application Form and, where applicable, the corresponding Service Terms. Upon submission of your Application Form (and thus your acceptance of the relevant Service Terms and these General Terms), you will be regarded as having agreed to the then current Service Fees for the Services for which you have contracted. It is your responsibility to familiarise yourself with the Service Fees and the date of payment of the Service Fees applicable to the Services you have subscribed for.

- 6.2 **Due Dates:** The Service Fees payment due dates are as follows:
- 6.2.1 transaction-based Service Fees for processing are due upon the bank or third party payment service provider (as the case may be) authorising the relevant payment to be made to you or by you, and you remain liable (legally responsible) to us notwithstanding any subsequent reversals or refunds;
 - 6.2.2 non-transaction-based Service Fees are due from the date of activation by BFI Pay / Paysoft of the Service notwithstanding any delays by you to commence usage of the Service;
 - 6.2.3 where a monthly Service Fee is charged and your use of the Service commences at any time other than the first day of a calendar month, you will be charged on a pro rata basis (in proportion to) for the Service provided during that month (including in respect of the month of termination of a Service); or
 - 6.2.4 where you require additional services not agreed specified in the Service Terms, we may charge you additional service fees on a times and materials basis at our then current standard rates subject to prior agreement between BFI Pay / Paysoft and the Client.
- 6.3 **Service Fee Changes:** Fees are increased by 5% annually in line with industry increases we receive from our suppliers. If however an event occurs outside of our control, such as a unilateral increase in transactional banking rates, we reserve the right to amend or vary the Fees and charges from time to time on 30 (thirty) days prior written notice to you. When we notify you of any adjustments to the Fees that affect a Service, you are entitled to terminate the relevant Service on written notice to us prior to the date in which the adjustments come into effect. If you do not terminate the relevant Service after the adjustments come into effect, the adjustments apply to you from the date they come into effect.
- 6.4 **Taxes:** Unless otherwise stated, Fees do not include any taxes, VAT, levies, duties or similar governmental assessments of any nature ("**Taxes**"). You are responsible for paying all Taxes associated with the Services. If BFI Pay / Paysoft has the legal obligation to pay or collect Taxes for which you are responsible the appropriate amount shall be invoiced to and paid by you, unless you provide BFI Pay / Paysoft with a valid tax exemption certificate authorised by the appropriate taxing authority.
- 6.5 **Set-off:** BFI Pay / Paysoft may, without notice, set off any debts or liabilities due from the Client or Clients Affiliates to BFI Pay / Paysoft or any of its Affiliates under this Agreement against any debts or liabilities owed by BFI Pay / Paysoft or any of its Affiliates to the Client or Client Affiliates, regardless of the place of payment of either obligation. The right applies whether or not the relevant debts or liabilities are matured and whether those debts or liabilities are present, future, actual, contingent, potential, liquidated and/or unliquidated. For these purposes, BFI Pay / Paysoft may value future, contingent, potential and/or unliquidated items. The exercise by BFI Pay / Paysoft of any of its rights under this clause shall be without prejudice to any other rights or remedies (including but not limited to set-off) to which BFI Pay / Paysoft or its Affiliates are otherwise entitled (by operation of law, contract, or otherwise).

You are not entitled to withhold any payment of any Service Fees due to BFI Pay / Paysoft or its affiliates by reason of any alleged breach of the General Terms or Service Terms by BFI Pay / Paysoft or its affiliates or for any other reason whatsoever. In addition, you may not apply set-off to or demand any discount, rebate or reduction in respect of any Service Fees owed to BFI Pay / Paysoft or its affiliates.

6.6 **Payment Defaults:** Should you fail to pay any amount to BFI Pay / Paysoft on the due date for payment, then BFI Pay / Paysoft may, without prejudice to any of its other rights in law or under the Agreement:

6.6.1 charge interest at the prime rate published by BFI Pay / Paysoft's bankers from time to time on the overdue amount, calculated from the due date until the date of payment (both dates inclusive), which interest, if charged, will be capitalised monthly; and/or

6.6.2 take all such further steps as may be necessary to recover the outstanding amount from you, including without limitation using external debt collection agencies or attorneys; and/or

6.6.3 recover from you any additional expenditure incurred by BFI Pay / Paysoft relating to the tracing and/or collection of unpaid amounts, which costs shall be for your account; and/or

6.6.4 inform any credit bureau of your payment default; and/or

6.6.5 suspend our Service(s) and your access to your Client Account in the BFI Pay Portal.

6.7 **Payment Queries or Disputes:** You may direct any billing or account queries to BFI Pay / Paysoft at support@bfipro.com. A certificate signed by either the General Manager or Financial Manager of BFI Pay / Paysoft, whose appointment, qualification and authority need not be proved, shall be prima facie proof of the amount in Service Fees due and payable by you at any time. In the event of any dispute arising between us regarding the determination of the amounts owing by you under any invoice presented to you by BFI Pay / Paysoft. If we are unable to resolve within fourteen (14) days of the dispute arising, the dispute will be addressed in accordance with provisions of this Agreement. You will pay the undisputed amount of such invoices in accordance with the Agreement.

7 IMPOSED TRANSACTION LIMITS & DELAYS

BFI Pay / Paysoft reserves the right to –

7.1 impose an upper limit on the amount of a single transaction which will be accepted through the Service;

7.2 impose a transaction review for certain potentially high-risk transactions and impose limits on the amount of payments you can process through the Service without our prior written approval;

7.3 impose certain limits with regards to the flow of funds in the system including, but not limited to, funds received and funds withdrawn. Details of these limits will be available on the Portal from time to time; and freeze or suspend your access to the Service for an indefinite period if there is suspicion of any illegal activity taking place or for any other reason whatsoever.

8 COLLECTION AND PROCESSING OF INFORMATION

8.1 When becoming a Client and from time to time thereafter, you will be required to provide certain personal and other information (including in certain instances, special personal information of your users and/or Customers) to us to enable us to provide the Services to you ("Your Information").

8.2 We will collect, process, transfer, collate, organise, update, store and distribute

("Process") Your Information in accordance with these General Terms and our Privacy Policy. For the purposes of these General Terms, "Processing" and "Processed" shall have a corresponding meaning.

- 8.3 **By disclosing or submitting Your Information to us you consent to us Processing Your Information for the purposes described in these General Terms and our Privacy Policy. You are responsible for ensuring that your users (including Customers) when providing us with any information, have provided prior consent to us Processing their information.**
- 8.4 You are responsible for the accuracy of Your Information and that Your Information is correct. We are not responsible for checking the accuracy of any aspect of any of Your Information, files or records you provide to us and we will not be liable (legally responsible) for any payment related errors made resulting from errors or incorrect information in your files or records.
- 8.5 Should Your Information change, please inform us and provide us with updates to Your Information as soon as reasonably possible to enable us to update Your Information.
- 8.6 You authorise BFI Pay / Paysoft, and our affiliates, directly or through our authorised third parties, to make any inquiries we consider necessary to validate your identity and registration. This may include requiring you to provide BFI Pay / Paysoft with faxed or scanned documentation such as a government issued identification card, ordering a credit report and performing other credit checks or verifying Your Information provide against third party databases. However, because user verification on the Internet is difficult, we cannot and do not guarantee any Client's or Payer's identity. You understand and agree that we may engage carefully selected third parties, such as credit reporting agencies or identity verification companies in order to review your credit report so as to assess your eligibility to hold a Client Account and your ability to use the Services or associated features.
- 8.7 You are solely responsible for securing all data in your possession or under your control.

9 REPRESENTATIONS AND WARRANTIES

- 9.1 The Client represents and warrants to BFI Pay / Paysoft as follows:
- 9.1.1 The Client has full capacity, power and authority to abide by this Agreement and to exercise its rights and perform its obligations hereunder.
- 9.1.2 This Agreement is valid, binding and enforceable against the Client in accordance with its terms and no provision of this Agreement is in conflict with any of the Client's obligations under its constitutional documents, Applicable Law or any other document, charter or agreement to which the Client is subject.
- 9.1.3 The Client will use the Services in good faith, in accordance with the terms of this Agreement and in accordance with all Applicable Laws. In particular, the Client will not use the Services in a manner that that could result in a violation of anti-money laundering, counter terrorist financing and similar legal and regulatory obligations.
- 9.1.4 The Client shall comply with any technical specifications available on the BFI Pay Portal, which BFI Pay reserves the right to modify at any time.
- 9.1.5 **BFI Pay / Paysoft is not part of, nor participate in sales and procurement contracts executed between the Client and its**

Customers. The Client shall comply with consumer obligations, data privacy obligations, tax obligations, exchange obligations or any other obligation establishes in mandatory Applicable Law.

9.2 BFI Pay / Paysoft represents to the Client that BFI Pay / Paysoft has the power and authority to enter into this Agreement and to perform its obligations.

10 DATA MANAGEMENT AND PROTECTION

10.1 The Client shall abide by Applicable Law, and its contractual and other obligations to its Customers, in providing Customer Data to BFI Pay / Paysoft and processing Customer Data through the use of the Services.

10.2 BFI Pay / Paysoft may not use or disclose Customer Data except as permitted by clause 10.3.

10.3 BFI Pay / Paysoft may use and disclose Customer Data, in accordance with Applicable Law, for the following purposes: (a) providing, improving and developing the Services; (b) market research and trend analysis; (c) taking steps to prevent, detect or prosecute fraud and other offences and/or to comply with Applicable Law; (d) sending marketing and other communications to Customers; (e) credit assessment of Customers; and (f) other purposes authorized by the Client in this Agreement or otherwise in writing. BFI Pay / Paysoft may also take steps to derive anonymised Customer Data from identifiable Customer Data, and may use and disclose anonymised Customer Data, for any lawful purposes, in accordance with Applicable Law.

10.4 The Client shall provide such information and offer such choices to, and obtain such consents from, its Customers as are reasonably required to enable BFI Pay / Paysoft to use and disclose the Customer Data as set out in clause 10.4 in accordance with Applicable Law. Where a required consent to (or failure to exercise an opt-out from) use of Customer Data for any of the purposes specified in clause 10.4 cannot be made a condition to processing a transaction under Applicable Law, the Client shall (i) nonetheless use reasonable endeavours to facilitate Customer choices allowing such use and disclosure; and (ii) promptly notify BFI Pay / Paysoft in writing of any required consent which is withheld or subsequently withdrawn and any opt-out choice which is exercised.

10.5 The Client acknowledges that BFI Pay / Paysoft may be required to contact Customers to provide information and seek consents as necessary to allow BFI Pay / Paysoft to use and disclose Customer Data as set out in clause 10.4 in accordance with Applicable Law. The Client shall take such steps, consistent with Applicable Law, as BFI Pay / Paysoft reasonably request in writing to facilitate these communications, including making available space in its web or mobile interfaces and/or providing Customer contact details.

10.6 If, in the course of providing the Services, BFI Pay / Paysoft processes Customer Data which comprise personal data as a processor on behalf of the Client as controller:

10.6.1 BFI Pay / Paysoft shall:

(a) only process those Customer Data on the instructions of the Client; and

(b) have in place appropriate technical and organisational measures to protect those Customer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular

(but not only) where the processing involves the transmission of data over a network, and against all other unlawful forms of processing; and

10.6.2 the Client instructs BFI Pay / Paysoft to take such steps in the processing of those Customer Data as BFI Pay / Paysoft considers necessary or desirable for the provision of the Services.

11 INTELLECTUAL PROPERTY

- 11.1 All intellectual property rights relating to the Services are owned by and vest exclusively in BFI Pay / Paysoft and its Affiliates. The information given by the Client to its Customers concerning the Services does not create any intellectual property or other right on the part of the Client or the client over the Services or their functionalities, or, without limitation, over the trademarks, trade names, goodwill, domain names, websites, computer software (source or object code), data, logos, images, copyrighted materials, patents, inventions, know how, or any other information, owned by BFI Pay / Paysoft, their Affiliates, and/or their suppliers or subcontractors.
- 11.2 Notwithstanding the above, the Client gives BFI Pay / Paysoft and / or the Service Provider(s) the right to use its name or company name, and also to mention its business activity, in any promotions or advertising concerning the Services, regardless of the type of advertising or media used.

12 CONFIDENTIALITY

- 12.1 During the term of this Agreement and for 5 (five) years from the date that this Agreement are terminated, the Receiving Party may not use Confidential Information for a purpose other than the performance of its obligations under this Agreement. In particular, the Receiving Party may not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with the provisions of this clause 13.
- 12.2 During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its directors, other officers, employees, agents, Affiliates, delegates, sub-contractors and customers on a strict need-to-know basis to the extent that disclosure is necessary or desirable for the purposes of this Agreement. The Receiving Party shall ensure that any such recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if such recipient was a Party to this Agreement.
- 12.3 Clauses 13.1 and 13.2 do not apply to Confidential Information:
- 12.3.1 which is at the date of this Agreement, or at any time after that date becomes, publicly known other than by the Receiving Party's or other recipient's breach of this Agreement;
- 12.3.2 which can be shown by the Receiving Party to the Disclosing Party's satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party; or
- 12.3.3 to the extent required by Applicable Law provided that in these circumstances the Receiving Party shall advise the Disclosing Party of same prior to such disclosure, in order for the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard.
- 12.4 If the Receiving Party receives a notice from a governmental authority or faces legal

action to disclose Confidential Information received under this Agreement, then the Receiving Party shall promptly, if not prohibited by law/notice/governmental authority, notify the Disclosing Party of the same such that the Disclosing Party may have the opportunity to intercede, obtain protective order and contest such disclosure and, upon request, shall cooperate with the Disclosing Party in contesting such a disclosure. Further, the Parties agree that in event the Receiving Party is required to disclose the Confidential Information pursuant to the legal action, notice, order, it shall not disclose any Confidential Information in excess of the legal requirement and to any other person.

13 DISCLAIMER AND LIMITATION OF LIABILITY OF PAYSOFT

13.1 Whilst we take all reasonable steps within our control to make each of our Service(s) available to you on a consistent and continuous basis, we cannot always guarantee or warrant fault free Services.

13.2 As far as the law allows, we offer our Services “as is” and on an “as available” basis without warranties or implied by statute, common law or otherwise (including satisfactory quality and fitness for purpose). You understand and agree that we do not guarantee or that:

13.2.1 the Service(s) are merchantable, of satisfactory quality, accurate, fit for your particular purposes or needs;

13.2.2 the Service(s) will operate error-free;

13.2.3 the Service(s) are accessible (either directly or through third-party networks) at all times or locations of your choosing, including that the connection between your computer, system, terminal or other electronic devices and the acquiring bank will be 100% uninterrupted; or

13.2.4 the time it will take to complete a transaction will remain consistent because the Services are largely dependent upon many factors beyond BFI Pay / Paysoft’s reasonable control, including (but not limited to) delays by the banks and its facilities.

13.3 All obligations on BFI Pay / Paysoft arising out of or in connection with this Agreement are obligations to use reasonable efforts and not obligations to achieve a specific result.

13.4 Except as set out in this Agreement or prescribed by law, all conditions, warranties and representations, expressed or implied by (i) statute, (ii) common law or (iii) otherwise, in relation to the Services are excluded.

13.5 BFI Pay / Paysoft is not liable to the Client under any circumstance, whether for negligence, breach of contract, misrepresentation or otherwise, for:

13.5.1 loss or damage which are incurred by the Client as a result of:

(a) third party claims;

(b) viruses, malicious or disruptive codes, power cuts or service interruptions or other IT or hardware or software problems or faults;

(c) decisions by any relevant court, regulatory or other authority or the operation of Applicable Law; and/or

(d) loss of profit, goodwill, business opportunity or anticipated saving suffered by the Client;

13.5.2 indirect, consequential, punitive, exemplary or similar loss or damage (including damage to reputation) suffered by the Client; and/or

13.5.3 loss or damage that may be the consequence, wholly or partially, of a breach by the Client of this Agreement.

13.6 The entire liability of BFI Pay / Paysoft under or in connection with this Agreement whether for negligence, breach of contract, misrepresentation or otherwise, is limited, in respect of each event or series of connected events, to the total Fees paid by the Client under this Agreement to BFI Pay / Paysoft during the twelve (12) month period immediately preceding the even that gave rise to the claim.

13.7 Nothing in this Agreement shall operate to exclude or restrict the liability of BFI Pay / Paysoft for death or personal injury or for any matter, which such liability cannot be lawfully excluded or limited.

14 INDEMNITY

14.1 The Client shall indemnify, and keep indemnified BFI Pay / Paysoft and their Affiliates, officers, employees and agents (each an "**Indemnified Party**"), immediately on demand against each loss, liability or cost (including, without limitation, that incurred defending or settling a claim alleging such a liability) which they incur as a result of:

14.1.1 any breach of the terms of this Agreement, improper use of the Services, violation of Applicable Law, or violation of the rights of any third party, by the Client, any of their Affiliates or any person acting on their behalf; and/or

14.1.2 processing of Customer Data and Information by an Indemnified Party as may reasonably be necessary to provide the Services.

14.2 Nothing in this clause restricts or limits the general obligation at law for an Indemnified Party to take reasonable efforts to mitigate losses.

15 INSPECTION

15.1 The Client shall permit the authorised representatives of BFI Pay / Paysoft and/or the acquiring banks to carry out physical inspections of the place(s) of business or other facilities of the Client to verify if the Client is in compliance with its obligations hereunder.

15.2 If the Client refuses such inspection or provides inaccurate, untrue, or incomplete information, or fails to comply with the terms and conditions of this Agreement, BFI Pay / Paysoft reserves the right to suspend or terminate the BFI Pay / Paysoft Services with immediate effect.

16 TERM AND TERMINATION

16.1 Either Party may terminate this Agreement (or any Service Terms) at any time, on 30 days prior written notice to the other Party.

16.2 A Party ("**Initiating Party**") may terminate this Agreement with immediate effect by written notice to the other Party ("**Breaching Party**") if any of the following events take place or is expected to take place:

- 16.2.1 the Breaching Party is in material breach (whether or not a repudiatory breach) of an obligation under this Agreement and, if the breach is capable of remedy, the Breaching Party has failed to remedy that breach within 30 days after receipt of written notice of the breach;
 - 16.2.2 the Breaching Party has passed a resolution for its winding up or a court of competent jurisdiction has made an order for the Breaching Party's winding up, dissolution or entry into business rescue proceedings;
 - 16.2.3 an administration order has been made in relation to the Breaching Party or a receiver, or an encumbrancer has been appointed to take possession of or sell, a assets of the Breaching Party;
 - 16.2.4 the Breaching Party has made an arrangement or composition with its creditors generally or has made an application to a court of competent jurisdiction for protection from its creditors generally; or
 - 16.2.5 any other procedure having similar effect to the above is initiated.
- 16.3 BFI Pay / Paysoft may suspend or terminate this Agreement by written notice to the Client with immediate effect if BFI Pay / Paysoft is of the opinion that any of the following events have taken place or are expected to take place:
- 16.3.1 the Client ceases to carry on business;
 - 16.3.2 the Client merges with any other person or in any other way changes the persons who have the ability to direct, guide or otherwise influence its affairs;
 - 16.3.3 BFI Pay / Paysoft is unable to recover the Fees or other sums set out at clause 4.3 for any reason, or considers that the total value of Refunds is unreasonable;
 - 16.3.4 BFI Pay / Paysoft determines that continuing to provide the Services to the Client represents increased risk of loss or liability or risk to reputation to Paysoft or any of its Affiliates;
 - 16.3.5 the Client engages in any trading practices or other activity which might give rise to fraud or any other criminal activity or suspicion of fraud or any other criminal activity.
- 16.4 **In the event of termination where a collection service is used, any money held by BFI Pay / Paysoft on the Client's behalf (including any withheld portion) shall be retained for an additional period of 6 months to cover any reversals, where after the net amount shall be transferred to you. If within the 6-month period we observe a high reversal rate (determined in our reasonable discretion), we are entitled to withhold the retained amount for such further period to cover any possible reversals that may arise.**
- 16.5 Termination of this Agreement, does not affect a Party's accrued rights and obligations at the date of termination.
- 16.6 Clauses 4.4, 4.5, 6.4, 8, 10, 11, 12, 13, 14, 18 and 22 shall survive termination of this Agreement.
- 16.7 Each Party's further rights and obligations shall cease immediately on termination except as otherwise specified in this Agreement, except that those clauses, the survival

of which is necessary for the interpretation or enforcement of this Agreement, shall survive termination of this Agreement, and shall continue in full force and effect.

- 16.8 If a Service is terminated for any reason, the Client will pay all Fees payable up to the termination date.

17. **FORCE MAJEURE**

- 17.1 Neither BFI Pay / Paysoft nor the Client shall be in breach of this Agreement or liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control (such affected party, the "**Affected Party**" and such event, a "**Force Majeure Event**"). In such circumstances the Affected Party shall be entitled to a reasonable extension of the time for performing such obligations.
- 17.2 As soon as reasonably possible after the start of the Force Majeure Event the Affected Party shall notify the other Party in writing of the details and effect of the Force Majeure Event. As soon as reasonably possible after the end of the Force Majeure Event the Affected Party shall resume performance of its obligations under this Agreement.
- 17.3 The Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement.

18. **NOTICES**

- 18.1 Except for the service of proceedings, a notice under or in connection with this Agreement (a "**Notice**"):
- 18.1.1 shall be in writing; and
 - 18.1.2 may be delivered personally or sent by electronic mail or registered mail to the Party due to receive the Notice at its address set out in the Application Form, or to another address specified by that Party by not less than seven days' written notice to the other Party. If sent by registered mail, a party shall send a copy via e-mail.
- 18.2 Unless there is evidence that it was received earlier or later a Notice is deemed given:
- 18.2.1 if sent by electronic mail, the next Business Day assuming that no notification of failure to deliver the electronic mail was received by the sending party;
 - 18.2.2 if sent by registered mail, five Business Days after posting it.

19. **ELECTRONIC COMMUNICATIONS**

- 19.1 To the fullest extent permitted by applicable law, you consent to receiving the Agreement or any part thereof, and any other agreements, notices or other communications ("**Communications**") from BFI Pay / Paysoft regarding your use of the Services electronically. Electronic Communications may be posted on the Portal and/or sent to the e-mail address we have on record for you. Please print a copy of each Communication and retain it for your records.
- 19.2 BFI Pay / Paysoft reserves the right, but assumes no obligation to, provide Communications in paper format.

- 19.3 You agree that in the event of a dispute between you and BFI Pay / Paysoft or between you and any other Client or Customer, BFI Pay / Paysoft's electronic records of your transactions, these General Terms, Privacy Policy, Service Terms, any identity verification information provided in a paper format and subsequently scanned or otherwise converted into an electronic format, and any other information stored or created electronically shall be admissible in a court of law or in relation to a law enforcement or regulatory investigation or prosecution.

20. MISCELLANEOUS

- 20.1 BFI Pay / Paysoft may revise the provisions of the General Terms, the Service Terms, the Portal Terms and the Privacy Policy at any time (but not the terms of the Application Form). BFI Pay / Paysoft shall notify the Client of any revision or addition to such terms at least 30 days before the date such revision or addition is to become effective. Each such amendment shall be binding on the Client from the effective date of that amendment.
- 20.2 If any provision in this Agreement becomes illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- 20.3 BFI Pay / Paysoft is entitled to assign the Agreement to any third party without your consent other than if such assignment would be to your detriment, but for security reasons, you may not cede, assign or otherwise transfer the Agreement or any of your rights or obligations thereunder to any other person without obtaining BFI Pay / Paysoft's prior written consent thereto.
- 20.4 If either of us fails or delays the exercise of any rights or remedies under the Agreement, we will not be deemed to have waived (i.e. given up) those rights or remedies in any way.
- 20.5 The Agreement (including the Privacy Policy and other documents or policies incorporated into these General Terms or the relevant Service Terms) is the entire agreement between you and BFI Pay / Paysoft with respect to your use of the relevant Services, and supersedes all documentation, information and other communications (in each case whether spoken or written) between us with respect to such access and use; and (subject to any express contrary provision in this Agreement) may only be amended if in writing and signed by the Parties.
- 20.6 If the Consumer Protection Act, 2008 ("CPA") applies to the Agreement, it is not intended that any of the provisions in the Agreement contravene anything contained in the CPA. All the provisions in the Agreement must be treated as being qualified, to the extent necessary, to ensure the provisions of the CPA are complied with.

21. RELATIONSHIP BETWEEN THE PARTIES

The relationship between BFI Pay / Paysoft and the Client is on principal-to-principal basis. Nothing contained herein shall be deemed to create any association, partnership, joint venture or relationship of principal and agent or master and servant, or employer and employee between the Parties hereto or any affiliates or subsidiaries thereof or to provide either Party with the right, power or authority, whether express or implied to create any such duty or obligation on behalf of the other Party.

22. GOVERNING LAW AND ENFORCEMENT

- 22.1 This Agreement and any non-contractual obligations arising out of or in connection with it are governed by laws of the Republic of South Africa.

22.2 Should a dispute of any nature whatsoever arise between you and BFI Pay / Paysoft on any matter provided for in or arising out of the Agreement and such dispute is not resolved by the Parties, save for urgent or interim relief which may be granted by a competent court, such a dispute may be submitted to confidential arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa. Arbitration proceedings shall be conducted in Cape Town in English.