



PAYFLEX TERMS AND CONDITIONS

Last Updated: 28 September 2023

Even though you will be subscribing for the Payment Method via the Peach Payments platform, you are also required to accept and agree to the Payflex terms and conditions, as set out below.

The use of the Payment Method via our platform is still subject to our [Master Terms of Service](#).

Peach may update these Terms from time to time and will publish the updated terms on our website. We will notify you in writing of any material changes.

References to "you" or "your" are references to the merchant who applied to use our Services and whose details were provided to us during our application and onboarding process. Reference to "us" or "we" or "our" is a reference to the Peach Payments entity providing the Services to you in terms of our Master Terms of Service.

Fees. The **acceptance** fee (the fee that Peach Payments charges per transactions completed using the Payment Method) is set out in our fee schedule, which is accessible on our Website or as communicated to you in writing during the application/onboarding process. Where the Merchant has a merchant account directly with Payflex for the use of Payment Method, Payflex may charge you an acceptance or other fee (a fee for enabling the use of the specific payment method) directly. The fees set out in Annexure A to the Payflex Terms represent standard Payflex pricing – your applicable pricing will be confirmed in writing during the application/onboarding process.

Please note that the acceptance fee is separate to the **processing fee** which we charge you in terms of our Master Terms of Service. The processing fee is a fixed fee that Peach Payments charges per transaction submitted for processing via our platform, regardless of the type of payment method used or the amount of the transaction or whether you have a direct merchant account with the payment method provider. The processing fee is also set out in our fee schedule, which is accessible on our Website or as communicated to you in writing during the application/onboarding process.

SEE NEXT PAGE FOR PAYFLEX T'S AND C'S

entered into between

Payflex Proprietary Limited

and

Peach Payment Services Proprietary Limited

and the

Merchant

1. INTERPRETATION

In this Agreement, clause headings are for convenience and shall not be used in its interpretation, and unless the context clearly indicates a contrary intention:

- 1.1. an expression which denotes:
 - 1.1.1. the any gender includes the other genders;
 - 1.1.2. a natural singular includes the plural and vice versa;
- 1.2. the following expression shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:
 - 1.2.1. "**AFSA**" means the Arbitration Foundation of Southern Africa (or its successor in title);
 - 1.2.2. "**Agreement**" means this merchant services agreement together with its annexures, as amended from time to time;
 - 1.2.3. "**Amex**" means American Express®;
 - 1.2.4. "**Applicable Laws**" means in relation to a Party:
 - 1.2.4.1. all and any statutes and subordinate legislation and common law; and
 - 1.2.4.2. regulations; and
 - 1.2.4.3. ordinances and by-laws; and
 - 1.2.4.4. Rules, directives, codes of practice, circulars, guidance notices, judgments and decisions of any competent authority, the Payment System Management Body, the SARB, or any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation and any replacement or amendment thereof; and other similar provisions,from time to time, compliance with which is mandatory for that Party;
 - 1.2.5. "**Approvals**" means all approvals, consents, licenses, permits and rights including all approvals, consents licenses, permits and rights from any and all Payments Schemes, regulators, the SARB, the Payment System Management Body, other governmental, regulatory and statutory entities and authorities, which are required in terms of Applicable Laws;
 - 1.2.6. "**Business Day**" means any day other than a Saturday, Sunday or official public holiday in South Africa;
 - 1.2.7. "**Chargeback**" has the meaning ascribed to the term in clause 13.6 below;
 - 1.2.8. "**Companies Act**" means the Companies Act 71 of 2008;
 - 1.2.9. "**Confidential Information**" means in relation to a Party any information of a confidential and/or commercially sensitive nature, howsoever obtained or received and whether or not

marked confidential, including any technical, commercial, financial or scientific information, know how, trade secrets, processes, business information, and/or any other information or material of whatever description or nature proprietary to such Party, whether in written, oral, magnetic, or machine-readable or other format;

- 1.2.10. "**Customer**" means the Person who makes a Purchase;
- 1.2.11. "**Customer Information**" means Personal Information associated with a Customer;
- 1.2.12. "**Customer Terms and Conditions**" means the terms and conditions which govern the relationship between the Customer and Payflex as set out on the Payflex Website;
- 1.2.13. "**Effective Date**" means, notwithstanding the Signature Date, the earlier of the date the Payflex Platform is integrated with the Merchant Site or the date when the first Purchase on the Merchant Site is completed;
- 1.2.14. "**Fees**" means the fees as set out in Annexure A;
- 1.2.15. "**Force Majeure**" means any event or circumstance whatsoever which is not within the reasonable control of the affected Party including (without limitation) *casus fortuitus*, strikes, thefts, fire, explosion, riot, insurrection or other civil disorder, war (whether declared or not), or military operations, international restrictions, any requirement of any international authority, any requirement of any government or other competent local authority and any court order;
- 1.2.16. "**Goods**" means the goods and/or services a Customer purchases from the Merchant Site;
- 1.2.17. "**Guarantee Services**" means the guarantee provided by Payflex to Peach Payments to the Merchant for the payment of the Goods Purchased by the Customer, provided that the Customer makes use of the Pay-Later Service;
- 1.2.18. "**Intellectual Property**" means all intellectual property rights owned by any Party subsisting anywhere in the world, which is in any way capable of protection in law, including without limitation, trademarks, domain names, copyright, patents, designs and all proprietary rights in and to ownership of any idea, discovery, artwork, design, concept, technique or improvement, industry information, know how, system, methodology, data model, computer software, computer source code and object code, report, correspondence, documentation, flow chart, data base, table, calculation, spreadsheet, schematic plan, photograph, presentation or invention (whether patented or not) and any other rights of a similar nature which exist now or will in the future exist;
- 1.2.19. "**Invalid Transactions**" has the meaning ascribed to the term in clause 16.1 below;
- 1.2.20. "**MasterCard**" means MasterCard International Incorporated;
- 1.2.21. "**Merchant**" means the Person contracted with Peach Payments in terms of a Peach Payments Agreement to use the Peach Payments Services;
- 1.2.22. "**Merchant Site**" means the e-commerce website(s) of the Merchant as stipulated in the Payflex Application Form;
- 1.2.23. "**Parties**" means Payflex, Peach Payments and the Merchant and a reference to "**Party**" means a reference to any of them;
- 1.2.24. "**Pay-Later Service**" means the service offered by Payflex through Peach Payments that, subject to the approval of Payflex, allows Customers to pay the Purchase Price by instalments;
- 1.2.25. "**Pay-Now Service**" means the service offered by Payflex through Peach Payments that allows Customers to pay the Purchase Price in full in a single payment;
- 1.2.26. "**Payflex**" means Payflex Proprietary Limited, a private company with limited liability duly incorporated under the laws of South Africa, with registration number 2017/406318/07;

- 1.2.27. **"Payflex Advertising"** means the advertising assets which belong to Payflex and which are displayed on and/or at the Merchant Site, including the Payflex Product Widget and the Payflex Checkout Button on the Merchant Site;
- 1.2.28. **"Payflex App"** means the proprietary technology application developed by Payflex which a Customer will install on a mobile phone and/or tablet or other similar technology, which will allow a Customer to load card details to create a digital wallet for purposes of receiving the Services;
- 1.2.29. **"Payflex Application Form"** means the google form sent to the Merchant by Peach Payments to be populated by the Merchant in order to sign up to receive the Services;
- 1.2.30. **"Payflex Checkout Button"** means the Payflex checkout payment button embedded in the checkout page of the Merchant Site provided through Peach Payments
- 1.2.31. **"Payflex Payment Mark"** means an element of the Payflex Advertising that is displayed on and/or at the Merchant Site to indicate to shoppers that Payflex is available as a payment method for the Merchant;
- 1.2.32. **"Payflex Platform"** means the proprietary technology platform developed by Payflex for the purposes of providing the Services;
- 1.2.33. **"Payflex Product Widget"** means an element of the Payflex Advertising that is displayed with a product on the Merchant Site that demonstrates the benefits of the Pay-Later Service as relates to the product;
- 1.2.34. **"Payflex Website"** means www.payflex.co.za;
- 1.2.35. **"Payment Schemes"** include VISA, MasterCard, AMEX and any other applicable payment scheme, and **"Payment Scheme"** means any of them, as the context may require;
- 1.2.36. **"Payment Scheme Rules"** mean the documented rules and regulations as published and amended by the Payment Schemes from time to time;
- 1.2.37. **"Payment Service"** includes the Pay-Now Service and the Pay-Later Service, and any other service that may be offered to Customers by Payflex;
- 1.2.38. **"Payment System Management Body"** means a body recognised by the SARB in terms of section 3 (1) of the National Payment System Act 78 of 1998 with the object of organising, managing and regulating the participation of its members in the payment system;
- 1.2.39. **"PCI DSS"** means the Payment Card Industry Data Security Standard;
- 1.2.40. **"PCI SSC"** means the Payment Card Industry Security Standards Council;
- 1.2.41. **"Peach Payments"** means Peach Payment Services Proprietary Limited, a private company with limited liability duly incorporated under the laws of South Africa, with registration number 2012/076633/07;
- 1.2.42. **"Peach Payments Agreement"** means the "Peach Payments Terms and Conditions for Online Card Acceptance" or "Master Services Agreement" concluded between Peach Payments and a Merchant;
- 1.2.43. **"Peach Payments Platform"** means the payment platform accessible to Merchants by Peach Payments via application programming interfaces (APIs) and other software to enable Merchants to use the Peach Payments Services;
- 1.2.44. **"Peach Payments Services"** means the transaction and settlement services provided by Peach Payments to Merchants allowing, amongst other payment methods, the acceptance and processing of cards as a form of payment in exchange for a products and services;

- 1.2.45. **"Person"** includes any natural or juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, trust, undertaking, voluntary association, body corporate, and any similar entity;
- 1.2.46. **"Personal Information"** has the meaning assigned thereto in POPIA;
- 1.2.47. **"POPIA"** means the Protection of Personal Information Act 4 of 2013;
- 1.2.48. **"Privacy Policy"** means the privacy policy as set out on the Payflex Website, as amended from time to time;
- 1.2.49. **"Processing"** has the meaning assigned thereto in POPIA and **"Process"** and **"Processed"** shall have corresponding meaning;
- 1.2.50. **"Purchase"** means any purchase of Goods made by a Customer at the Merchant using the Payflex Services;
- 1.2.51. **"Purchase Price"** means the full purchase price (inclusive of VAT) payable in respect of any Goods Purchased by a Customer, including any delivery or other costs included in the price;
- 1.2.52. **"Refund"** means a Transaction reversing a Purchase (in full or in part) and refunding the Customer with the Purchase Price (in full or in part) through a refund of the relevant instalments paid at the date of the refund;
- 1.2.53. **"Rules"** include Payment Scheme Rules as well as any rules of PCI SSC if applicable (including PCI DSS) or the Payment System Management Body, as may be amended from time to time;
- 1.2.54. **"SARB"** means the South African Reserve Bank;
- 1.2.55. **"Services"** means the provision of the Payment Services and the Guarantee Services;
- 1.2.56. **"Settlement"** means the payment paid into the Merchant's account by Peach Payments in accordance with the provisions of clause 9;
- 1.2.57. **"Signature Date"** means the date upon which this Agreement is signed by the signatory who signs it last;
- 1.2.58. **"Transaction"** means any transaction including but not limited to a Purchase, Refund or Chargeback;
- 1.2.59. **"Transaction Data"** means any and all electronic data and any records pertaining to a Transaction, including the date and the time of the Transaction being concluded, the Fee and the Settlement date;
- 1.2.60. **"Transaction Date"** means the date upon which the Transaction is concluded;
- 1.2.61. **"VAT"** means value-added tax levied in terms of the Value-added Tax Act, 89 of 1991; and
- 1.2.62. **"VISA"** means Visa International Service Association;
- 1.3. any reference to any Applicable Law shall be a reference to that Applicable Law as at the Signature Date, and as amended or substituted from time to time;
- 1.4. any reference to a statute shall include all regulations issued under that statute, as amended and substituted from time to time;
- 1.5. if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;

- 1.6. where any term is defined within a particular clause other than clause 1.2, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement;
- 1.7. where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day;
- 1.8. any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 1.9. if figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two;
- 1.10. the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s; and
- 1.11. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provides that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. INTRODUCTION

- 2.1. Payflex has agreed to provide Payment Services to Customers through Peach Payments in accordance with the Customer Terms and Conditions.
- 2.2. The Merchant has agreed to sell the Goods to the Customer in accordance with the Merchant's terms and conditions of sale.
- 2.3. Peach Payments has agreed to guarantee to the Merchant the amounts payable by the Customer to the Merchant for the sale of the Goods if the Customer makes use of the Pay-Later Service, and Payflex has agreed to guarantee payment of such amounts to Peach Payments.
- 2.4. The Merchant has agreed to pay the Fees to Peach Payments in accordance with the terms and conditions set out in this Agreement.
- 2.5. Payflex will provide certain services to the Merchant through Peach Payments as an aggregator in terms of an "Aggregator Agreement" entered into with a bank.

3. DURATION

- 3.1. This Agreement shall commence on the Effective Date and continues until terminated in accordance with the provisions of this Agreement.
- 3.2. Notwithstanding any other provision of this Agreement:
 - 3.2.1. Payflex may terminate the Agreement at its convenience for any reason and without liability, by giving not less than 1 (one) month prior written notice to the Merchant; and
 - 3.2.2. the Merchant may terminate the Agreement at its convenience for any reason and without liability, by giving not less than 1 (one) month prior written notice to Payflex.

4. NATURE OF RELATIONSHIP

- 4.1. Nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or the like between the Parties nor to constitute one Party the agent of the other for any purpose and no Party shall be liable for the debts or obligations of the other Party, howsoever incurred.
- 4.2. No Party shall by reason of the actions of the other Party incur any personal liability as a partner to any third party and no Party shall be entitled to authorise, to represent or hold out to any third party that the relationship between the Parties is that of a partnership, joint venture or the like as aforesaid.

5. **CONFLICTS**

- 5.1. In addition to any Peach Payments Agreement, the Parties agree that the terms of this Agreement will apply to them in respect of the Services.
- 5.2. To the extent that there is a conflict between a Peach Payments Agreement and this Agreement, then unless otherwise set forth herein, the Parties agree that the terms of this Agreement will apply in respect of such conflict.

6. **WARRANTIES AND REPRESENTATIONS**

- 6.1. The Merchant warrants and represents that:
 - 6.1.1. it has full capacity and authority to enter into and perform its obligations under this Agreement;
 - 6.1.2. this Agreement is executed by a duly authorised representative of that Party;
 - 6.1.3. there are no actions, suits, proceedings or regulatory investigations pending, or to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under this Agreement;
 - 6.1.4. it has the necessary skills and resources to comply with the obligations assumed by it in terms of this Agreement;
 - 6.1.5. the conclusion and/or compliance by that Party of its obligations hereunder shall not breach any Applicable Law or agreement binding on it;
 - 6.1.6. all information supplied to the other Party is true, accurate and complete in all respects; and
 - 6.1.7. it will not do anything, or engage in any activity, which is likely to adversely affect or damage the other Party's good name and/or reputation.
- 6.2. The Merchant represents, warrants and undertakes on an on-going basis that in the performance of its obligations under this Agreement that it:
 - 6.2.1. shall:
 - 6.2.1.1. act with due skill and care;
 - 6.2.1.2. to the extent required to perform its obligations under this Agreement, comply with all Applicable Laws, and to the extent applicable, has obtained all the Approvals and authorisations required of it in terms of any Applicable Laws, and will be able to provide proof of such compliance, approval or authorisation, if required;
 - 6.2.1.3. not infringe the Intellectual Property of the other Parties or any third party; and
 - 6.2.2. shall not:
 - 6.2.2.1. make any misrepresentation in connection with any Goods, or any Transaction which may bind Payflex;
 - 6.2.2.2. make any warranty or representation to any third party which may bind Payflex;
 - 6.2.2.3. engage in any conduct which is false, misleading or deceptive in relation to the Goods supplied by the Merchant, Payflex products or services or in any other dealings with the Customer;

6.2.2.4. use the Services to give a Customer cash; and

6.2.2.5. use the Services to pay for Goods where the Transaction is not a *bona fide* transaction.

6.3. The Merchant warrants, specifically in relation to the Transaction Data, that:

6.3.1. all information provided is true and correct, and is not misleading in any material respect;

6.3.2. any Transaction and accompanying Transaction Data is valid;

6.3.3. the Merchant has complied with the requirements of the Agreement applicable to processing Transactions and Services;

6.3.4. the Merchant is not aware of any facts which would render any of the Services or any Transaction invalid; and

6.3.5. the Transaction represented by the Transaction Data is not subject to any dispute, set-off or counter claim.

7. OBLIGATIONS OF THE PARTIES

7.1. Each Party shall:

7.1.1. at all times in the execution of its obligations in terms of this Agreement, fulfil their obligations in terms hereof with the necessary diligence and without any damage to the reputation, standing or goodwill of the other Party;

7.1.2. at all times act in a professional, responsible manner and maintain acceptable standards of support and protect the good name and integrity of the other Party;

7.1.3. conduct their affairs and their relationship with one another and in the utmost good faith and integrity in such manner as to minimise any risk of loss; and

7.1.4. co-operate with the other Party in order to limit that Party's exposure to fraud and non-compliance with Applicable Laws.

7.2. Neither Party shall make or issue any formal or informal announcement, advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other Person, without the prior written consent of the other Party (which approval shall not be unreasonably delayed or withheld).

8. GUARANTEE SERVICE

8.1. In respect of the Pay-Later Service only offered by Payflex, Payflex guarantees the payment to Peach Payments, and Peach Payments guarantees the payment to the Merchant, for Goods Purchased from the Merchant by the Customer (the "**Guarantee Service**").

8.2. In return for Peach Payments providing the Guarantee Service to the Merchant, the Merchant agrees to:

8.2.1. sell and deliver the selected Goods to the Customer in accordance with the Merchant's terms and conditions of sale; and

8.2.2. pay the Pay-Later Service and Pay-Now Service Fees to Peach Payments.

8.3. The Merchant has no obligation to pay the Pay-Later Fees where a Customer has not been approved by Payflex for the Pay-Later Service.

8.4. The Merchant acknowledges and agrees that Payflex reserves the right to refuse a Customer's application for the Pay-Later Service, in which case Payflex is under no obligation to provide the Pay-Later Service through Peach Payments to the Customer, and neither Payflex nor Peach Payments are obliged to provide the Guarantee Service to the Merchant.

9. **SETTLEMENT OF PURCHASE PRICE**

- 9.1. Peach Payments will settle the Merchant for all Purchases made by a Customer using the Payflex Platform in accordance with the Peach Payments Agreement.
- 9.2. Payflex will not be liable to the Merchant for any Settlements in terms of this Agreement.

10. **MERCHANT OBLIGATIONS**

- 10.1. The Merchant shall:
 - 10.1.1. sell the selected Goods to any Customer using the Payment Services in accordance with the Merchant's terms and conditions of sale;
 - 10.1.2. honour all Transactions;
 - 10.1.3. ensure that all Transactions are conducted and recorded in South African Rands;
 - 10.1.4. verify all Transaction details and Transaction reports on the Peach Payments Platform and notify Payflex and Peach Payments of any alleged discrepancies immediately, but no later than 30 (thirty) days from the date of the Transaction, when the Merchant becomes aware of the discrepancies;
 - 10.1.5. not charge a Customer a higher Purchase Price for Goods sold through the Payflex Platform than the Purchase Price charged through other online payment platforms;
 - 10.1.6. not implement any surcharge, fee or other pricing increase to the cost of any Goods in any Transaction which is attributable directly or indirectly, in whole or part, to the Services or the Fees;
 - 10.1.7. perform all obligations to a Customer, Peach Payments and Payflex in connection with a Transaction;
 - 10.1.8. not enter into a Transaction for any Goods which are not located in South Africa at the time of the conclusion of the Transaction;
 - 10.1.9. not enter into a Transaction where the Customer intends to make payment by way of gift card, voucher or prepaid store card;
 - 10.1.10. be responsible for the quality of the Goods sold to the Customer and all activities required to be undertaken by the Merchant to conclude the sale including arranging for the delivery of the Goods to the Customer (if applicable);
 - 10.1.11. be responsible for any dispute resolution with a Customer in relation to any Transaction and performance of all its obligations in terms of its terms and conditions relating to any Transaction;
 - 10.1.12. carry all risk and liability for the conduct of any third party with which it may contract in order to perform its obligations in terms of a Transaction, including delivery, under the Agreement;
 - 10.1.13. deal with any Refund in accordance with clause 13 and ensure that Customers are aware of this process;
 - 10.1.14. stop accepting Transactions by way of the Payflex Platform immediately if Payflex and/or Peach Payments gives the Merchant a notice to do so;
 - 10.1.15. accept all risk, costs and charges related to the sale of the Goods to the Customer including customer complaints, disputes, non-delivery, Refunds and/or Chargebacks;
 - 10.1.16. be responsible for and comply with Applicable Laws in relation to all Customer claims and enquiries in relation to the Goods;

- 10.1.17. provide reasonable assistance as requested by Payflex and/or Peach Payments with respect to the integration of the Payflex Platform;
- 10.1.18. confirm its approval of any Payflex Advertising as soon as is practicable;
- 10.1.19. to the extent permissible in law, and to the extent consistent with the Merchant's privacy policies and where such data is reasonably accessible and requested by Payflex, provide Customer historical data, including previous sales and account history, transaction frequency, average transaction value and membership of any Merchant mailing list or customer club to Payflex for the purposes of assisting Payflex to assess the efficacy of the Payment Services and whether or not to offer the Payment Services to a Customer; and
- 10.1.20. not allow or conclude any Transactions in the prohibited industries nor conduct any of the illegal activities set out in Annexure B and as may be advised by Payflex from time to time.
- 10.2. The Merchant acknowledges and shall ensure that Services shall be used by the Merchant only and shall not be used by any other third party or on behalf of any third party without the prior written approval of Payflex.
- 10.3. The Merchant must ensure that Goods Purchased are shipped within 7 (seven) days of the Transaction Date. Should the Goods not be shipped within 7 (seven) days of the Transaction Date, then the Merchant must contact Payflex and/or Peach Payments and the Customer and alert them of the delay. The Merchant must request the Customer's permission to proceed with the sale. If the Merchant fails to do so, the Transaction becomes an Invalid Transaction.
- 10.4. The Merchant shall remain responsible for the payment of VAT to the relevant tax authorities in respect of the Transaction and the Merchant shall issue a tax invoice to the Customer.
- 10.5. The Merchant will confirm before the Effective Date that it is registered for VAT (if applicable) and will provide its VAT registration number to Peach Payments.
- 10.6. The Merchant acknowledges and agrees that:
 - 10.6.1. the Payment Schemes and the Payment System Management Body may impose limits in the respect of the turnover of the Merchant; and
 - 10.6.2. if the turnover of the Merchant exceeds the said limits, the Merchant may be obliged to enter into a direct merchant agreement with a bank.
- 10.7. The Merchant shall immediately notify Peach Payments in writing if:
 - 10.7.1. there is a change in the contact details of the Merchant, including e-mail address, contact number and/or Domicilium;
 - 10.7.2. circumstances arise which may have a material adverse effect on the Merchant's business, assets or financial condition, or the Merchant's ability to perform its obligations under this Agreement;
 - 10.7.3. the Merchant sells, leases or transfers its business;
 - 10.7.4. the Merchant materially changes the nature, scope or type of its business or product range;
 - 10.7.5. the Merchant intends to cease carrying on business or goes into business rescue or liquidation; and/or
 - 10.7.6. there is a change of control in the Merchant.
- 10.8. Should the Merchant notify Peach Payments in terms of clause 10.7 above, the Merchant undertakes to take all such reasonable steps and complete and submit all such documents within 7 (seven) days of such a request from Peach Payments.

11. **PAYFLEX OBLIGATIONS**

- 11.1. Payflex shall:
 - 11.1.1. maintain adequate security measures appropriate for the protection of Merchant's and Customer's Personal Information;
 - 11.1.2. be responsible for the security of cardholder data that is handled on behalf of Merchants and Customers;
 - 11.1.3. act in accordance with the Privacy Policy and Customer Terms and Conditions;
 - 11.1.4. perform the Services in accordance with the Agreement and all Applicable Laws; and
 - 11.1.5. provide the Payflex Advertising to the Merchant for approval, which approval shall not to be unreasonably withheld.
- 11.2. Payflex does not represent or warrant that the Services will be uninterrupted, error-free, without delay or that all errors will be corrected immediately.
- 11.3. Payflex reserves the right to withhold one or more of the Services at any time by giving prior written notice to the Merchant of at least 2 (two) days.

12. PEACH PAYMENTS OBLIGATIONS

- 12.1. Peach Payments shall ensure that it will perform its obligations as set forth in the Peach Payments Agreement.

13. REFUND ARRANGEMENTS AND CHARGEBACK

- 13.1. The Merchant may arrange for a Refund to be processed if a Customer is entitled to a Refund in terms of Applicable Laws or in accordance with the Merchant's refund policy, which policy the Merchant shall make readily available to Peach Payments on request.
- 13.2. Customer will refer any queries or inquiries with respect to Refunds or the quality of the Goods directly to the Merchant and Peach Payments shall not initiate any Refund without written confirmation from the Merchant.
- 13.3. The Merchant shall be responsible for the creation and issuing of any credit note to the Customer.
- 13.4. If the Merchant agrees to issue a Refund, it shall issue a request to Peach Payments on the Peach Payments Platform (a "**Refund Request**") confirming the Transaction and the amount to be refunded in respect of the Transaction ("**Refund Amount**").
- 13.5. Following receipt of a Refund Request from the Merchant:
 - 13.5.1. Payflex will process the Refund, which includes (i) refunding Customer card payments (if required), (ii) adjusting any outstanding instalment payments due on the Customer's account (if required), and (iii) advising the Customer accordingly;
 - 13.5.2. the Merchant shall owe the Refund Amount to Peach Payments, which Peach Payments shall deduct from the next Settlement payment or debit the Merchant's bank account in accordance with the Peach Payments Agreement;
 - 13.5.3. Peach Payments shall not refund any of the applicable Fees to the Merchant.
- 13.6. If any Transaction is disputed by a Customer which, after consultation with the Merchant to attempt to remedy the dispute, results in the full Purchase Price or part thereof being reversed by a bank ("**Chargeback**") at the expense of Peach Payments and / or Payflex, Peach Payments shall inform the Merchant in writing and deduct this amount ("**Chargeback Amount**") from the next Settlement payment. Peach Payments may elect to debit the Merchant's Bank account for any Chargeback amount in accordance with the Peach Payments Agreement.

- 13.7. The Merchant hereby authorises Peach Payments to set off any Refund Amounts, Chargeback Amounts, Invalid Transactions provided for in this Agreement, including in this clause 13 against the Settlement amount.
- 13.8. If a Customer exchanges an item for another item either by returning the item, and such an exchange involves a partial refund of Purchase Price, then the processing of the relevant Refund shall be dealt with in accordance with the provisions of this clause 13.
- 13.9. In addition, all Refund and Chargeback requests are thoroughly investigated by Payflex in accordance with its policies for same. Payflex and/or Peach Payments will communicate with the Merchant throughout this process and the Merchant shall comply with Payflex and/or Peach Payments and at all times, the Merchant shall act in accordance with any instruction issued by Payflex and/or Peach Payments in relation to the processing of a Refund or Chargeback.
- 13.10. Notwithstanding anything to the contrary in this Agreement, if a Transaction is rescinded, terminated, refunded, invalidated, varied or set aside for any reason whatsoever, Peach Payments shall be entitled to recover from the Merchant all amounts paid by Peach Payments to the Merchant in respect of that Transaction through set-off against the Settlement amount or through any other means necessary.

14. FEES

- 14.1. The Fees payable by the Merchant are set out in Annexure A, and exclude VAT and all other taxes, duties, imposts or levies.
- 14.2. Peach Payments will be entitled to set off any Fees on the next Settlement amount payable to the Merchant.
- 14.3. The Merchant hereby authorises Peach Payments to set off any Fees due by the Merchant in terms of this Agreement against any Settlement due to the Merchant.
- 14.4. The Merchant shall pay to Peach Payments, in full and without set-off or counter claim or deduction of any tax:
 - 14.4.1. the amount of any sum owing to Peach Payments which Peach Payments is unable to set-off in terms of this Agreement;
 - 14.4.2. an amount equal to any Fees, costs, penalties or expenses Peach Payments must pay due to a Transaction being an Invalid Transaction or being charged back; and
 - 14.4.3. all penalties and costs incurred as a result of a security breach involving account information collected by the Merchant or by a third party on behalf of the Merchant, including all investigation costs as may be required.
- 14.5. The Merchant may request a copy of the current Fees payable under this Agreement.

15. PROCESSING OF TRANSACTIONS

- 15.1. The Merchant shall make use of the Services to process the Transactions.
- 15.2. The Merchant shall not, without the written consent of Payflex, process a Transaction unless delivery of the Goods to the Customer will be completed within 7 (seven) days of the Transaction Date.
- 15.3. The Parties shall process a Transaction with reasonable care in order to detect fraud, unauthorised use or the forgery of a Transaction.
- 15.4. Immediately after processing each Transaction, the Merchant must provide the Customer with a receipt for that Transaction.
- 15.5. The Merchant shall retain all Transaction Data relating to each Transaction for a period of at least 12 (twelve) months after the completion of the Transaction.

16. INVALID TRANSACTIONS

- 16.1. A Transaction is invalid ("**Invalid Transaction**") if the:
- 16.1.1. Transaction is illegal for any reason or in terms of any laws;
 - 16.1.2. Transaction occurs after the termination or suspension of this Agreement;
 - 16.1.3. Merchant processes the Transaction in circumstance when it knew, or should have known, that the Transaction has not been authorized by the Customer and/or Payflex, or is fraudulent;
 - 16.1.4. Merchant was notified by Peach Payments and / or Payflex not to accept and/or process the Transaction;
 - 16.1.5. Transaction is charged, recorded and processed in a currency other than South African Rands;
 - 16.1.6. Purchase Price of Goods charged through the Payflex Platform is higher than the Purchase Price charged by the Merchant for the same goods on other online payment platforms;
 - 16.1.7. Purchase Price charged to Customers includes a surcharge or added fee for using the Payflex Platform;
 - 16.1.8. Merchant has, without the prior written consent of Payflex, contracted with a third party to supply the Goods Purchased in a Transaction;
 - 16.1.9. Merchant has failed to supply the Customer with the Goods in satisfactory condition or at all, or has failed to provide Payflex with proof of Customer receipt and satisfaction within 5 (five) Business Days of Payflex's request for same;
 - 16.1.10. Merchant has processed the Transaction on behalf of a third party or has allowed a third party to make use of the Services;
 - 16.1.11. Merchant charges the Customer directly or processes payment through a different online payment platform;
 - 16.1.12. Transaction is not for the supply of Goods to a genuine Customer or, represents a transfer of funds rather than the supply of Goods; and/or
 - 16.1.13. Merchant failed to comply with its duties in terms of this Agreement when processing the Transaction and/or failed to act according to any reasonable request from Payflex concerning a Transaction.
- 16.2. If a Transaction is determined to be an Invalid Transaction, Payflex may, at its sole discretion (with or without the request of a Customer):
- 16.2.1. refuse to accept the Transaction; or
 - 16.2.2. if the Transaction has been completed, within 18 (eighteen) months thereafter, Payflex shall be entitled to recover the relevant amount from the Merchant in accordance with clause 13.

17. **MERCHANT SITE**

- 17.1. The Merchant must, at its cost, immediately rectify any security or processing faults or issues identified by either the Merchant, Customer, Peach Payments or Payflex.
- 17.2. The Merchant must only utilise the Services as instructed and authorised by Payflex and/or Peach Payments.
- 17.3. The Merchant must have the following information available on the Merchant Site:
 - 17.3.1. the Merchant's return and refund policy, delivery policy and cancellation policy;
 - 17.3.2. a customer service contact, including e-mail address and telephone number;

- 17.3.3. the transaction currency which must be South African Rands;
 - 17.3.4. a clear statement that the Merchant's business is domiciled in South Africa. That statement must be disclosed to the Customer immediately prior to the Customer completing payment instructions for a Transaction;
 - 17.3.5. the Merchant's privacy policy; and
 - 17.3.6. security capabilities and the Merchant's policy for transmission of Customer's details.
 - 17.4. The Merchant Site must display the Payflex Product Widget on all product pages of the Merchant Site where the Purchase of the product is eligible for the Pay-Later Service.
 - 17.5. The Merchant must display the Payflex Payment Mark on the home page of the Merchant Site, and wherever other payment marks are displayed, and create a link between the Payflex Payment Mark and the Payflex website.
 - 17.6. The Merchant must have a valid SSL (Secure Sockets Layer) certificate installed on the Merchant Site.
18. **MARKETING LAUNCH CAMPAIGN**
- 18.1. The Merchant and Payflex to develop a joint-marketing plan to promote the awareness of the Payment Services to the Merchant's customers during the 90 (ninety) day period starting from the Effective Date ("**Launch Campaign**").
 - 18.2. The Merchant will ensure that all marketing activities are in line with POPIA requirements, in particular section 69 of POPIA.
19. **CONFIDENTIALITY AND NON-DISCLOSURE**
- 19.1. Each Party may in the execution of this Agreement come into possession of Confidential Information. Each Party agrees to treat all Confidential Information, as well as the existence and contents of this Agreement, as confidential and to use and divulge it only as far as is necessary for purposes of this Agreement.
 - 19.2. Each Party acknowledges that the other Party has a proprietary interest in the confidentiality of the Confidential Information being maintained.
 - 19.3. Except with the prior written consent of the other Party, neither Party will make any copy, reproduction, facsimile or duplicate of Confidential Information by any means or for any purpose whatsoever, other than to the extent necessary to provide the services or to fulfil the purpose for which the Confidential Information was disclosed or furnished.
 - 19.4. The obligations set out in this clause shall not apply to information which:
 - 19.4.1. at the time of its disclosure had already been published or was otherwise publicly available;
or
 - 19.4.2. subsequent to its disclosure became (through no fault or failure of either of the Parties) part of the public domain; or
 - 19.4.3. at the time of its disclosure can be shown by a Party to have been in its possession prior to the disclosure thereof.
 - 19.5. The Parties shall not at any time during the term of this Agreement, release any statement to the press, or make any other public statement of any nature regarding the relationship or the subject matter of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
 - 19.6. The provisions of this clause 19 shall endure irrespective of the termination of this Agreement.
20. **INTELLECTUAL PROPERTY**

- 20.1. Other than is provided for in this Agreement:
- 20.1.1. all Intellectual Property belonging to either of the Parties shall remain the property of such Party and the other Party will not acquire any right, title or interest in and to such Intellectual Property in terms of this Agreement;
 - 20.1.2. each Party agrees that it shall not reverse assemble, decompile, reverse engineer or otherwise attempt to derive source code (or any algorithms) from such Intellectual Property, except as specifically authorised in writing by the Party owning such property or as specifically provided in terms of this Agreement;
 - 20.1.3. neither Party shall in any manner alter, remove or affect the display of the respective Intellectual Property rights notices (and disclaimers) of the other Party and/or their vendors and licensors without the prior written approval of the other Party, and their vendors or licensors where applicable; and
 - 20.1.4. neither Party may use the other Party's Intellectual Property, and specifically trade names, logo's ("**Trade Marks**") or any derivative or component thereof without the prior written approval of the other Party ("**Trade Mark Authorisation**").
- 20.2. Any Trade Mark Authorisation shall terminate upon the termination of this Agreement in which event all rights of a Party authorised to use the Trade Marks ("**Licensed Party**") of the other Party ("**Licensing Party**") shall terminate, the goodwill connected therewith shall remain the property of the Licensing Party in which event the Licensed Party shall immediately discontinue all use of the Trade Marks so licensed, or any of them, and any confusingly or deceptively similar imitation thereof and shall delete the licensed Trade Marks from all materials in relation to which they are or have been used.
- 20.3. The Licensed Party acknowledges that the Trade Marks of the Licensing Party, all rights therein, and the goodwill associated therewith, are, and shall remain, the exclusive property of the Licensing Party and it shall take no action which will adversely affect the Licensing Party's ownership thereof or the goodwill associated therewith and any and all goodwill arising from use of the Trade Marks of the Licensing Party's Trade Marks shall inure to the benefit of Licensing Party. Nothing herein shall give the Licensed Party any proprietary interest in or to the Licensing Party's Trade Marks, except the right to use such Trade Marks in accordance with this Agreement, and the Licensed Party will not contest the Licensing Party's title in and to the Trade Marks so licensed.
- 20.4. Each Party shall be responsible, at its cost, for licensing intellectual property rights owned or controlled by any Person other than the Party concerned that may be included within the Intellectual Property of that Party from time to time ("**Third Party Technology**") to the extent that such Third Party Technology is used in respect of the Intellectual Property of such Party. All licences granted hereunder shall be subject to existing agreements entered into by the Parties for such Third Party Technology.

21. **PERSONAL INFORMATION**

- 21.1. The Parties acknowledge that stringent compliance with all Applicable Laws related to the protection of privacy and the Processing of Personal Information including POPIA is required and accordingly agree that:
- 21.1.1. they will ensure that the transfer of any Personal Information of Customers in terms of this Agreement complies with chapter 9 of POPIA; and
 - 21.1.2. they will at all times comply with the provisions of POPIA, including all applicable data protection and privacy laws.
- 21.2. The Parties will immediately notify the other Parties where there are reasonable grounds to believe that Personal Information processed or hosted by either of them has been accessed or acquired by any unauthorised Person.
- 21.3. The Merchant acknowledges that Payflex shall be entitled to Process Customer Information and to market various products and services to Customers in accordance with the Customer Terms and Conditions and its Privacy Policy.
- 21.4. The provisions of this clause 21 shall endure irrespective of the termination of this Agreement.

22. FORCE MAJEURE

- 22.1. Should a Party ("**Affected Party**") be prevented from fulfilling any of its obligations in terms of this Agreement as a result of a Force Majeure event, then:
- 22.1.1. those obligations shall be deemed to have been suspended to the extent that and for so long as the Affected Party is so prevented from fulfilling them and the corresponding obligations of the other Party ("**Unaffected Party**") shall be suspended to the corresponding extent;
 - 22.1.2. the Affected Party shall promptly notify the Unaffected Party in writing of the Force Majeure event and such notice shall include an estimation (given reasonably) of the approximate period for which the suspension in terms of 22.1.1 will endure. Such estimation will not be binding on the Affected Party;
 - 22.1.3. the Affected Party will be excused from further performance or observance of its obligation(s) so affected for so long as the circumstances giving rise to the Force Majeure event prevail and the Affected Party continues to use its commercially viable efforts to recommence performance or observance whenever and to whatever extent possible without delay; and
 - 22.1.4. the Affected Party shall reasonably co-operate with the other Party in implementing such contingency measures as that other Party may reasonably require.
- 22.2. Neither Party may recover from the other any expense related to any circumstance of Force Majeure or the recommencement of its performance following such circumstance of Force Majeure.
- 22.3. Where a Party is the Affected Party it shall not be required to recover, and the other Party shall not be required to pay any fees or charges to the extent that such fees or charges relate to Services or obligations which are not performed by the Affected Party.
- 22.4. Subject to the provisions of clause 22.1, the Affected Party will not be liable to the other Party for any default or delay in the performance of its obligations under this Agreement if and to the extent that such default or delay is caused by Force Majeure provided however, that the Affected Party is without fault in causing such default or delay, and such default or delay could not have been prevented by the Affected Party through the use of commercially viable alternative sources, workaround plans or other means.
- 22.5. Should an event of Force Majeure preventing the performance by a Party of its obligations under this Agreement continue for more than 30 (thirty) days after the date of the notice referred to in 22.1.2, then either Party shall be entitled (but not obliged) to terminate this Agreement by written notice to the other Party.

23. DISPUTE RESOLUTION

- 23.1. If any dispute arises out of or in connection with this Agreement, or related thereto, whether directly or indirectly (including with respect to the formation, breach, termination or invalidity hereof) (a "**Dispute**"), the Parties must refer the Dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of arbitration. The reference to negotiation and mediation is a precondition to the Parties having the Dispute resolved by arbitration.
- 23.2. A Dispute within the meaning of this clause 23 exists once one Party notifies the other in writing of the nature of the Dispute and requires the resolution of the Dispute in terms of this clause.
- 23.3. Within 10 (ten) Business Days following such notification, the Parties shall seek an amicable resolution to such Dispute by referring such Dispute to designated representatives of each of the Parties for their negotiation and resolution of the Dispute. The representatives shall be authorised to resolve the Dispute.
- 23.4. In the event of the negotiation between the designated representatives not resulting in an agreement signed by the Parties resolving the Dispute within 15 (fifteen) Business Days thereafter, the Parties must refer the Dispute for resolution by way of mediation in accordance with the then current rules of AFSA.
- 23.5. In the event of the mediation envisaged in clause 23.4 failing in terms of the rules of AFSA, the matter must, within 15 (fifteen) Business Days thereafter, be referred to and finally resolved by arbitration as envisaged in the clauses below.

- 23.6. The periods for negotiation or mediation may be shortened or lengthened by written agreement between the Parties.
- 23.7. Each Party agrees that the arbitration will be held as an expedited arbitration in Sandton in accordance with the then current rules for expedited arbitration of AFSA by 1 (one) arbitrator appointed by agreement between the Parties, including any appeal against the arbitrator's decision. If the Parties cannot agree on the arbitrator or appeal arbitrators within a period of 10 (ten) Business Days after the referral of the Dispute to arbitration, the arbitrator and appeal arbitrators shall be appointed by the Secretariat of AFSA, who shall administer and manage the arbitration proceedings.
- 23.8. The provisions of this clause 23 shall not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict or mandamus pending finalization of this Dispute resolution process for which the Parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.
- 23.9. The arbitration and all matters related thereto are strictly confidential and all records constitute Confidential Information. The arbitration will be held with only the Parties to (or Persons necessary to progress and conclude), the arbitration and their representatives present thereat.
- 23.10. This clause is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified or cancelled for whatsoever reason or cause.

24. **INDEMNITY AND LIMITATION OF LIABILITY**

- 24.1. Subject to clauses 24.2 and 24.3, each Party indemnifies the other Party from and against any loss, damage, costs, expenses and liabilities which such other Party may suffer or incur as a result of or in connections with any claim by any third party arising out of the actions or omissions of the first-mentioned Party, save to the extent that the legal action or claim arises out of the fraud or gross negligence of the Party so indemnified.
- 24.2. Without limiting the generality of the foregoing, a Party shall not be responsible to the other Party for any loss or consequential loss arising from any circumstances beyond the reasonable control of such Party, including any failure or malfunction in the Payflex Platform, any delay or error in an electronic communication (including a communication via cellular telephones), failure or malfunction in any supporting or shared networks. The use of any electronic means of communication is entirely at a Party's risk and the other Party does not warrant that such communication shall meet any particular criteria of accuracy, completeness or reliability of information, performance or quality.
- 24.3. Notwithstanding anything to the contrary in this Agreement, Payflex's total cumulative liability under or in any way connected with this Agreement or the provision of the Services is limited to the amount of the total Fees paid by Merchant to Payflex in the 1 (one) month period preceding the event giving rise to the claim;

25. **BREACH AND TERMINATION**

- 25.1. A Party will be in default of this Agreement if:
- 25.1.1. that Party ("**Defaulting Party**") breaches any material provision of this Agreement and that breach is incapable of being remedied;
- 25.1.2. the Defaulting Party breaches any material provision of this Agreement and fails to remedy such breach within 14 (fourteen) days of receiving written notice from the other Party requiring such remedy ("**Aggrieved Party**");
- 25.1.3. any representation or warranty made in connection with this Agreement or any other document supplied by that Party is materially incorrect or false;
- 25.1.4. that Party:
- 25.1.4.1. is wound up, liquidated, dissolved or deregistered in any event whether provisionally or finally and whether voluntarily or compulsorily, or passes a resolution providing for any such event;

- 25.1.4.2. is deemed to be unable to pay its debts;
 - 25.1.4.3. resolves that it voluntarily begin business rescue proceedings or has any business rescue proceedings commenced against it, as contemplated in section 132(1) of the Companies Act 71 of 2008;
 - 25.1.4.4. has a judgment of a competent court against such Party for the attachment of assets or for payment of any amount is not satisfied for more than 7 (seven) days after the date on which it is issued; or
 - 25.1.4.5. compromises or attempts to compromise with the Party's creditors generally or defer payment of debts owing by the Party to the Party's creditors.
- 25.2. The Aggrieved Party shall be entitled, in the case of default by the Defaulting Party, without prejudice to its other rights in terms of this Agreement or at law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith, in either case with or without claiming and recovering damages from the Defaulting Party.
- 25.3. The Defaulting Party will be liable for all legal costs, as may be permissible in law, in recovering any amount that the Defaulting Party owes to the Aggrieved Party.
- 25.4. Payflex shall, in its sole discretion, be entitled to suspend and/or terminate this Agreement immediately if the Merchant is (i) identified as generating excessive Chargebacks or (ii) suspected of fraudulent activity or of violating any Applicable Law or (iii) failing to timeously remediate Customer complaints related to Transactions at the Merchant to the satisfaction of the Customer.
- 25.5. If this Agreement is cancelled or terminated for whatever reason, it shall not affect the obligations of either Party that arose prior to such cancellation or termination, or obligations which survive this Agreement being cancelled or terminated.
- 25.6. A certificate signed by a director, company secretary, credit manager or internal accountant of the Aggrieved Party, specifying the amount owing by the Defaulting Party and further stating that such amount is due, owing and payable by the Defaulting Party, shall be sufficient (prima facie) proof of the amount thereof and of the fact that such amount is so due, owing and payable for the purpose of obtaining provisional sentence or other judgment against the Defaulting Party in any competent court. It shall not be necessary to prove the appointment of the Person signing any such certificate.

26. **DOMICILIUM**

- 26.1. The Parties choose as their respective *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to this agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows:
- 26.1.1. Payflex:
 - Physical Address:** 126 4th Street, Parkmore, 2196
 - Postal Address:** 126 4th Street, Parkmore, 2196
 - Email:** legal@payflex.co.za
 - 26.1.2. Peach Payments:
 - Physical Address:** 66 Albert Rd, 4th Floor, Block B, Woodstock, Cape Town, 7925
 - Postal Address:** 66 Albert Rd, 4th Floor, Block B, Woodstock, Cape Town, 7925
 - Email:** finance@peachpayments.com
 - 26.1.3. Either Party shall be entitled from time to time, by giving written notice to the other, to vary its physical Domicilium to any other physical address (not being a post office box or poste

restante) and to vary its postal or email Domicilium to any other postal address or email address.

- 26.2. Unless the contrary is proved, all notices given in terms of this agreement shall be in writing and any notice given by any Party to the other ("**the addressee**") which:
- 26.2.1. is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the addressee's physical *Domicilium* for the time being shall be deemed to have been received by the addressee at the time of delivery;
 - 26.2.2. if sent by prepaid registered post to its postal address for the time being, shall be deemed to have been received by the addressee on the 7th (seventh) Business Day after the date of posting thereof; and
 - 26.2.3. if transmitted by email is deemed to have been received by the addressee on the Business Day following the date of despatch.
- 26.3. This clause 26 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause 26.
- 26.4. Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

27. GENERAL

- 27.1. This Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
- 27.2. If any provision of the Agreement is found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of the Agreement will not be affected thereby.
- 27.3. No addition to, variation, novation or agreed cancellation of any provision of this Agreement shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.
- 27.4. No waiver, indulgence or extension of time which either Party ("**Grantor**") may grant to the other, nor any delay or failure by the Grantor to enforce, whether completely or partially, any of its rights, shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the Grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting such right.
- 27.5. Save as expressly provided in this Agreement:
- 27.5.1. Payflex shall be entitled to cede, delegate, encumber, assign or otherwise transfer any of its rights and/or obligations in terms of, and/or interest in, this Agreement to any third party; and
 - 27.5.2. the Merchant shall not be entitled to cede, delegate, encumber, assign or otherwise transfer any of its rights and/or obligations in terms of, and/or interest in, this Agreement to any third party without the prior written consent of Payflex.
- 27.6. No consent or approval in terms of or in connection with this Agreement shall be valid or effective unless in writing and signed by or on behalf of the Party giving such consent or approval.
- 27.7. For the purposes of this Agreement:
- 27.7.1. no data message, as defined in the Electronic Communications and Transactions Act No 25 of 2002 ("**ECTA**"), other than an email or facsimile, shall constitute writing;

- 27.7.2. no electronic signature or advanced electronic signature, as defined in ECTA, shall constitute a signature, except for the purposes of varying any date referred to in this Agreement or giving any consent or approval in terms of this Agreement.
- 27.8. Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, business rescue practitioner, curator or trustee, of either Party shall be bound by this Agreement.
- 27.9. The signature by either Party of a counterpart of this Agreement shall be as effective as if that Party had signed the same document as the other Party.
- 27.10. Each Party shall be liable to pay their own legal costs related to the negotiations, preparation and drafting of this Agreement.

Annexure A- Fees

1. The Fees agreed between the Parties are detailed below:

Service	Fee	Fee
(A) Pay-Later	Merchant Commission (% of gross Purchase Price)	5.25% (excl. VAT)
	Processing Fee (per transaction)	R4.00 (excl. VAT)
(B) Pay-Now	Merchant Commission (% of gross Purchase Price)	3.50% (excl. VAT)
	Processing Fee (per transaction)	R1.00 (excl. VAT)

Annexure B - Prohibited Industries and Activities

1. The following are prohibited industries in terms of this Agreement:
- 1.1. illegal business and activities according to Applicable Laws;
 - 1.2. gambling (including casino chips, gambling services, internet casino sites and Bingo);
 - 1.3. lottery sales;
 - 1.4. collection agencies;
 - 1.5. credit restoration services;
 - 1.6. prostitution (including unlicensed massage parlours and escort services); and
 - 1.7. internet adult digital content.
2. The following activities are prohibited:
- 2.1. promotion of illegal products;
 - 2.2. unlawful sales of pharmaceutical products;
 - 2.3. unlawful sales of tobacco and electronic smokeless tobacco products;
 - 2.4. prohibited gambling activities;

- 2.5. the Merchant engaging in activities or practices that are in the sole discretion of Payflex, deceptive or misleading or that reflect unfavourably upon the good name, goodwill, reputation or image of Payflex and/or the Payment Schemes;
- 2.6. transactions related to child pornography, bestiality or rape.