



## MERCHANT AGREEMENT

### 1. INTRODUCTION

- 1.1 The Merchant, *inter alia*, offers the online sale of goods and/or performance of services via its Website.
- 1.2 Mobicred is an authorised credit provider (operating under NCR Number: NCRC6523) entering into Credit Agreements with Mobicred Account Holders.
- 1.3 The Merchant wishes to facilitate the access by users of the Website to Mobicred credit facilities and the discharge of the Purchase Price via the Website.
- 1.4 The parties wish to record the terms and conditions of their agreement in writing and do so in terms of this Agreement where:
  - 1.4.1 PART A records the specific transactional terms governing the relationship between the parties; and
  - 1.4.2 PART B records terms and conditions of a general nature.

## PART A

### 2. DEFINITIONS

In this Agreement, unless inconsistent with the context, the following words and expressions shall bear the meanings assigned thereto and cognate words and expressions shall bear corresponding meanings:

- 2.1 “Agreement” refers to this merchant agreement together with Annexure 1 hereto provided that in the event of a conflict between any provision in this merchant agreement and Annexure 1 hereto this merchant agreement shall prevail.
- 2.2 “Approved Mobicred Transaction” refers to a Mobicred Transaction in relation to which the particular Mobicred Account Holder’s account with Mobicred has been debited by an amount equal to the Purchase Price.
- 2.3 “Business Day” refers to any day other than a Saturday, Sunday or public holiday in the Republic of South Africa.
- 2.4 “Commission” refers to the commission payable by the Merchant to Mobicred in respect of Approved Mobicred Transactions, as further provided in clause 12 below.
- 2.5 “CPA” refers to the Consumer Protection Act, No. 68 of 2008 and the Regulations thereto, as amended or replaced from time to time.
- 2.6 “Credit Agreement” refers to the written credit agreement entered into between Mobicred and the Mobicred Account Holder in terms whereof, *inter alia*, Mobicred provides to the Mobicred Account Holder access to a credit facility on the terms and subject to the conditions as provided in such written credit agreement;
- 2.7 “Go Live Date” refers to the 1<sup>st</sup> (First) Business Day following the date on which Mobicred advises the Merchant in writing that it, or the Payment Gateway (as the case may be), has successfully completed the Integration Process.
- 2.8 “Integration Guide” refers to the Integration Guide furnished by Mobicred to the Merchant, or the Payment Gateway (as the case may be), together with any instructions or guidance (whether written or verbal) furnished by Mobicred to the Merchant or the Payment Gateway (as the case may be) from time to time in relation to the integration of the Merchant or the Payment Gateway (as the case may be) into the Mobicred API. To the extent that there is a conflict between any provision of this Agreement and the Integration Guide, then the provisions of this Agreement shall prevail;
- 2.9 “Integration Process” refers to the process in terms whereof either the Merchant or the Payment Gateway (as the case may be) customizes its systems, processes and, in the case of the Merchant, its Website, to interact with the Mobicred API, strictly in accordance with the Integration Guide and this Agreement.
- 2.10 “Merchant” refers to the entity referred to as “the Merchant” on page 1 of this Agreement of care of the physical address, facsimile number and e-mail address recorded on such page.
- 2.11 “Merchant Payment Gateway Agreement” means the agreement entered into between the Merchant and a payment gateway in terms whereof, *inter alia*, the Payment Gateway facilitates transactions (including

payments by Mobicred to the Merchant and cancellations and refunds in respect of orders, in accordance with the terms and conditions of this Agreement) on the terms and conditions as contained in such Merchant Payment Gateway Agreement.

- 2.12 “Mobicred” refers to Mobicred (Pty) Ltd (Registration No. 2012/163391/07) of c/o the physical address, facsimile number and email address recorded on page 1 of this agreement.
- 2.13 “Mobicred Account Holder” or “Mobicred Customer” refers to any person:
- 3.14.1 who has entered into a Credit Agreement with Mobicred; and
  - 3.14.2 to whom a Mobicred account has been issued by Mobicred; and
- 2.14 “Mobicred API” refers to the Mobicred application programming interface, as more fully described in the Integration Guide.
- 2.15 “Mobicred IP” refers to Mobicred’s right, title and interest in and to any and all of its logos, trade names, trading styles, Trademarks, copyright, systems, programs, software and know-how whether reduced to material form or otherwise, that are to be utilised by the Merchant from time to time pursuant to this Agreement.
- 2.16 “Mobicred Payment Gateway Agreement” refers to the agreement entered into between Mobicred and a payment gateway in terms whereof, *inter alia*, the payment gateway is appointed by Mobicred to facilitate communication, and the conclusion of transactions between Mobicred and the Merchant on the terms and conditions as contained in such Mobicred Payment Gateway Agreement;
- 2.17 “Mobicred Offering” refers to the business of Mobicred and includes the entire offering made by Mobicred to the public, or any portion thereof, from time to time.
- 2.18 “Mobicred Transaction” refers to any online transaction concluded by a Mobicred Account Holder with the Merchant via the Website in terms whereof the Purchase Price of such transaction will be discharged by the Mobicred Account Holder by way of utilising amounts advanced pursuant to his or her Credit Agreement.
- 2.19 “NCA” refers to the National Credit Act, No. 34 of 2005 and the Regulations thereto, as amended or replaced from time to time.
- 2.20 “Nominated Bank Account” refers to:
- 2.20.1 the bank account details of the Merchant, as set out in the Settlement Annexure (1); or
  - 2.20.2 such other bank account as notified by a person duly authorised by the Merchant to Mobicred in writing and accompanied by written confirmation of the details of such other bank account on an official letterhead from the Merchant’s nominated bank; provided that any change to the Nominated Bank Account by the Merchant in the manner contemplated herein shall only become effective after the 5<sup>th</sup> (Fifth) Business Day following receipt by Mobicred of the written notice as aforesaid.
- 2.21 “Payment Gateway” refers to the person or entity who is the counter-party to a Mobicred Payment Gateway Agreement and a Merchant Payment Gateway Agreement (provided that both such agreements are of full force and effect and have neither been cancelled nor terminated by any of the parties thereto).
- 2.22 “Payment Facilitation Services” refers to the payment facilitation services performed by Mobicred for the Merchant in terms whereof:
- 2.22.1 Mobicred Account Holders will, when entering into Mobicred Transactions on the Website, be entitled to elect to discharge the Purchase Price by way of the utilisation of amounts available for access pursuant to their Credit Agreement; and
  - 2.22.2 the Purchase Price will thereafter be discharged by Mobicred to the Merchant, for and on behalf of such Mobicred Account Holders,
- on the terms and subject to the conditions of this Agreement and the Credit Agreement.
- 2.23 “Purchase Price” refers to the purchase price of the goods and/or services purchased by the Mobicred Account Holder from the Merchant pursuant to a Mobicred Transaction, including:
- 2.23.1 the VAT inclusive amount reflected on the Website during any checkout process in respect of the purchase price of the goods and/or services; and
  - 2.23.2 the amount reflected on the Website during any checkout process in respect of the delivery charge(s) (if any), together with any VAT thereon (if any); and

2.23.3 any other additional costs, fees or charges detailed on the Website and which are occasioned by such Mobicred Transaction, together with any VAT thereon (if any).

2.24 “Refund” refers to the reversal by Mobicred of the value of any transaction in its books and records in the manner contemplated in and subject to the provisions of clause 11 as read with clauses 13 and 14 below (as the case may be).

2.25 “Trademarks” refers to the trademark "Mobicred" and other trademarks of Mobicred (whether registered or not) utilised by it from time to time.

2.26 “Website” refers to the website(s) from which the Merchant sells, or will sell, its goods and/or services to Mobicred Account Holders.

### 3. APPOINTMENT

3.1 Mobicred hereby, subject to the terms and conditions provided in this agreement, authorizes the Merchant to provide goods and/or services to Mobicred Customers on the basis that the Purchase Price thereof is discharge by Mobicred on behalf of such Mobicred Customers.

3.2 The Merchant hereby appoints Mobicred to provide Payment Facilitation Services to it with effect from the Go- Live Date on the terms and subject to the conditions as contained in this Agreement, which appointment Mobicred hereby accepts.

3.3 Mobicred shall at all times act as an independent contractor and nothing in this Agreement shall constitute the parties as principal/agent or create any partnership or joint venture whatsoever between the parties, nor will anything contained herein authorise either of the parties to incur any liability on behalf of the other party.

### 4. DURATION

This Agreement shall commence on the date of last signature hereof (“the Signature Date”) and shall endure for an indefinite period, subject to termination by either party on 1 (one) month’s written notice to the other party.

### 5. APPOINTMENT OF THE PAYMENT GATEWAY

If a Merchant Payment Gateway Agreement and Mobicred Payment Gateway Agreement entered into with a Payment Gateway are both in force and effect then, notwithstanding anything to the contrary contained herein:

5.1 in all communications, notifications and the like via the Payment Gateway from Mobicred to the Merchant, the Payment Gateway shall act as the agent of Mobicred; and

5.2 in all communications, notifications and the like via the Payment Gateway from the Merchant to Mobicred, the Payment Gateway shall act as the agent of the Merchant,

### 6. WARRANTIES AND UNDERTAKINGS OF Mobicred

Mobicred warrants and undertakes to the Merchant that:

6.1 the Mobicred IP and the Mobicred Offering are the sole and exclusive property of Mobicred;

6.2 it has the power, right and authority to grant to the Merchant all the rights contemplated in terms of this Agreement;

6.3 it will perform the Payment Facilitation Services competently, professionally, diligently and timeously with the necessary reasonable skill and care;

6.4 it is entitled in terms of any legislation applicable at the Signature Date to perform the Payment Facilitation Services; and

6.5 it will comply with all statutory, regulatory and other requirements, including those contained in the NCA and all other provincial and local authority requirements (if any) as may be applicable to the Mobicred Offering and the performance of the Payment Facilitation Services.

6.6 Mobicred will carry any bad debts incurred by a Mobicred Customer pursuant to an Approved Mobicred Transaction.

### 7. GENERAL RIGHTS AND OBLIGATIONS OF THE MERCHANT The

Merchant undertakes to:

7.1 utilise the Payment Facilitation Services strictly in accordance with, and to comply at all times with, the standard operating procedures provided in the Integration Guide;

- 7.2 ensure that the terms and conditions pursuant to which it supplies goods and/or services to Mobicred Account Holders do not:
  - 7.2.1 afford the Merchant or the Mobicred Account Holder, as the case may be, any rights; or
  - 7.2.2 level any obligations on the Merchant or the Mobicred Account Holder, as the case may be, which conflict with, or derogate from, the rights and obligations of Mobicred in terms of this Agreement and/or any agreement entered into between Mobicred and the Mobicred Account Holder or any Merchant Payment Gateway Agreement;
- 7.3 process the relevant Mobicred Transaction in accordance with the terms and conditions of this Agreement;
- 7.4 retain a transaction history (electronic or otherwise) of all Mobicred Transactions, as well as accurate and comprehensive records and books of accounts relating to the supply of goods and/or services to Mobicred Account Holders for a minimum period of 3 (Three) years from the date of each such Mobicred Transaction (as contemplated further in clause 9 below), or for any further period thereafter as may be advised by Mobicred to the Merchant in writing or as may be prescribed by any law or regulation. This undertaking excludes Mobicred Account Holders' usernames and passwords;
- 7.5 not give, nor enter into any agreement of any nature whatsoever in terms whereof the Merchant is obliged to give, the Mobicred Account Holder any cash, other refund or discount (which has not been deducted from the Purchase Price) in instances where payment is effected to the Merchant by the Mobicred Account Holder by means of their Credit Agreement with Mobicred or which in any way would constitute a partial or full discharge of the Merchant's indebtedness to Mobicred;
- 7.6 not pay or give the Mobicred Customer any amount in cash whatsoever unless the Merchant has been pre-authorized by Mobicred in writing to effect any such cash transaction;
- 7.7 comply with all statutory, regulatory and other requirements, including those contained in the CPA and the NCA and all other provincial and local authority requirements (if any) as may be applicable to it and/or the Mobicred Offering;

## 8. OPERATING PROCEDURES

- 8.1 Mobicred shall be entitled to supplement, vary, amend, modify and/or replace all or any portion of its system integration and its standard operating procedures from time to time where it considers same necessary to improve or enhance the integration process.
- 8.2 The Merchant agrees and undertakes to provide such reasonable co-operation as Mobicred and/or the Payment Gateway, as applicable, may require in order to effect such improvement or enhancement .

## 9. APPROVAL OF Mobicred TRANSACTIONS

- 9.1 The Merchant undertakes not to execute any order prior to receiving mobicreds' automated authorization.
- 9.2 Mobicred shall, upon receipt by it of the Merchant's Mobicred Transaction creation request via the Mobicred API (as contemplated further in the Integration Guide), issue the Merchant or the Payment Gateway for and on behalf of the Merchant (as the case may be), with a reference number ("reference number") in the manner provided in the Integration Guide. All subsequent cancellation, approval and refund requests in respect of a Mobicred Transaction via the Mobicred API will make reference to the same reference number. Mobicred shall not be obliged to honour any cancellation or refund request in respect of a Mobicred Transaction if a valid Mobicred reference number is not provided to Mobicred by the Merchant or the Payment Gateway for and on behalf of the Merchant (as the case may be).
- 9.3 The Merchant may not split or disguise any Mobicred Transaction or act in any way so as to circumvent Mobicred approval procedures.
- 9.4 Approval of Mobicred Transactions will occur in real-time via the Mobicred API in accordance with the Mobicred standard procedures.

## 10. PAYMENTS IN RESPECT OF APPROVED Mobicred TRANSACTIONS

- 10.1 Mobicred shall, subject to the provisions of this clause 10 and clauses 12, 13 and 14 below, pay the Merchant an amount equal to the Purchase Price of all Approved Mobicred Transactions, which amount shall be calculated, and be due and payable by Mobicred to the Merchant on a weekly basis as provided Annexure 1 hereto.

10.2 Notwithstanding anything to the contrary contained herein, Mobicred may set-off against any amount due and payable by it to the Merchant under this clause, the Agreement or from whatsoever other cause arising (whether in terms of this Agreement or otherwise), any and all liquidated amounts due and payable from whatsoever cause by the Merchant to Mobicred in terms of this Agreement (including any Commission contemplated in clause 12 below and any amount due and payable by the Merchant to Mobicred in accordance with clauses 13 and/or 14 below, as the case may be) or from whatsoever other cause and howsoever arising. It is recorded and agreed that the provisions of Settlement Annexure 1 contemplate the exercise by Mobicred of its rights as contemplated in this clause 10.2.

10.3 For the sake of clarity and the avoidance of any doubt, payment by Mobicred to the Merchant in the manner contemplated in this clause 10 in respect of a particular Approved Mobicred Transaction shall be deemed to constitute a valid discharge by the Mobicred Account Holder of the Purchase Price in respect of the Approved Mobicred Transaction to which such payment relates.

## 11. REFUNDS AND CANCELLATIONS IN RESPECT OF Mobicred TRANSACTIONS and APPROVED Mobicred TRANSACTIONS

11.1 Should a refund or cancellation of any nature whatsoever be required to be made to Mobicred in respect of any Mobicred Transaction or Approved Mobicred Transaction, then in such event, the Merchant undertakes to complete and process, or cause to be processed and completed, as the case may be, a refund or cancellation request via the Mobicred API in accordance with the standard operating procedures. The Merchant undertakes further to pay the refunded amount to Mobicred forthwith thereafter, provided that Mobicred shall be entitled to, in accordance with the provisions of clause 10.2 above and as contemplated further in Settlement Annexure 1 hereto, set-off such refunded amount against any amount which is, or becomes, due and payable by Mobicred to the Merchant from time to time.

11.2 For the sake of clarity and the avoidance of any doubt, Mobicred shall be entitled to require a Refund in respect of any Mobicred Transaction or Approved Mobicred Transaction in respect of which a refund or cancellation request is made.

## 12. COMMISSION

12.1 Mobicred shall be entitled to receive a Commission in respect of all Approved Mobicred Transactions from time to time, which Commission shall be calculated and be due and payable by the Merchant to Mobicred in accordance with, and subject to, the provisions of Settlement Annexure 1 hereto.

12.2 It is recorded that all amounts payable by the Merchant to Mobicred during the currency of this Agreement excludes value added tax ("VAT"). In the circumstances, the Merchant shall be liable for the payment of any VAT levied in terms of the Value-Added Tax Act No 89 of 1991 (or any such statutory modification or re-enactment thereof) in respect of all amounts payable by the Merchant to Mobicred in terms of this Agreement. The Merchant shall effect payment of such VAT simultaneously with the payment of any amount payable by the Merchant to Mobicred in terms hereof.

12.3 If for any reason set-off by Mobicred in any manner contemplated in this Agreement is not possible, then the amount which is not capable of being set-off must be paid by the Merchant to Mobicred forthwith and without deduction or set-off of any kind into the bank account designated in writing by Mobicred to the Merchant from time to time. Notwithstanding anything to the contrary contained in this Agreement (including Settlement Annexure 1 hereto) the Merchant shall, forthwith upon written demand, pay to Mobicred any Commission which is then due and payable by the Merchant to Mobicred. If the Merchant is required to repay any amount to Mobicred in respect of which any Commission has been paid, or is payable, by the Merchant to Mobicred, then the Merchant shall (for the sake of clarity and the avoidance of any doubt) repay such amount to Mobicred in full and shall not be entitled to deduct any amount equal to any such Commission from the amount to be repaid.

## 13. INVALID Mobicred TRANSACTIONS

13.1 A Mobicred Transaction will be deemed to be invalid and Mobicred will have no obligation to pay the Merchant any amount in respect thereof if:

13.1.1 approval was not obtained by the Merchant or the Payment Gateway for and on behalf of the Merchant ("the Related Payment Gateway") in respect of such Mobicred Transaction in the manner contemplated in clause 10.2 above (as the case may be); or

13.1.2 the Merchant utilises a reference number in respect of such Mobicred Transaction other than the reference number furnished to the Merchant by Mobicred or the Related Payment Gateway for and on

behalf of Mobicred (as the case may be); or

13.1.3 the Merchant or the Related Payment Gateway (as the case may be) fails or is unable, within any retention period referred to in clause 7.4 above, to produce any documentation or information relating to any specific Mobicred Transaction;

13.1.4 the Merchant charges the Mobicred Customer a price over and above the price which it would have charged had the Purchase Price in respect of such Mobicred Transaction been paid in cash, by cheque, credit card or any means other than by way of the Credit Agreement.

13.2 To the extent applicable, Mobicred will notify the Payment Gateway via the Mobicred API in the event that a Mobicred Transaction is invalid in the manner contemplated above (“the Invalidity Notification”). The Payment Gateway has (or will, as the case may be) undertaken to, on receipt of the Invalidity Notification and for and on behalf of Mobicred, immediately communicate to the Merchant that the Mobicred Transaction detailed in the Invalidity Notification is invalid.

13.3 Mobicred shall be entitled, on written notice to the Merchant or in the manner contemplated in clause 13.2 (as the case may be) and provided that it is not disputed by the Merchant in the manner contemplated in clause 19 below or by the Related Payment Gateway in accordance with the terms and conditions of the Mobicred Payment Gateway Agreement, to effect a Refund in respect of any invalid Mobicred Transaction in terms of this Agreement. Should Mobicred elect to effect a Refund in respect of an invalid Mobicred Transaction, or to the extent that any other clause relating to Refunds in this Agreement becomes of operation, then in such event:

13.3.1 any amount paid by Mobicred to the Merchant in respect of such invalid Mobicred Transaction shall become immediately due and payable by the Merchant to Mobicred; and

13.3.2 Mobicred shall be entitled to, in accordance with the provisions of clause 10.2 above, set-off any amount due and payable by the Merchant to Mobicred in respect of such invalid Mobicred Transaction against any amount or amounts due and payable from time to time by Mobicred to the Merchant in accordance with, and subject to, the provisions of Settlement Annexure 1 hereto,

provided that notwithstanding anything to the contrary contained in this Agreement, the Merchant shall, upon written demand, pay the value of any invalid Mobicred Transaction forthwith to Mobicred.

#### 14. IRREGULAR Mobicred TRANSACTIONS

14.1 For the purposes of clause 14.2 an “irregular Mobicred transaction” shall mean any Mobicred Transaction:

14.1.1 arising from the fraudulent use of a Mobicred account by the Merchant or any director, member, employee, contractor or representative of the Merchant; or

14.1.2 which was processed or effected in any way which conflicts or differs from the way in which:

14.1.2.1 the Payment Gateway is, to the extent applicable, authorised to process Mobicred Transactions in terms of the Mobicred Payment Gateway Agreement; or

14.1.2.2 the Merchant is authorised to process or effect Mobicred Transactions in terms of this Agreement.

14.2 Mobicred will notify the Merchant, or the Payment Gateway for and on behalf of the Merchant (as the case may be) in the event that an irregular Mobicred transaction has taken place.

14.3 Unless otherwise disputed by the Merchant in the manner contemplated in clause 19 below, Mobicred shall be entitled, on written notice to the Merchant in the manner contemplated in clause 14.2 above, to effect a Refund in respect of any irregular Mobicred transaction and, to the extent that Mobicred has already paid the Merchant any amount in respect of such irregular Mobicred transaction (“the transaction amount”) then such transaction amount shall become immediately due and payable by the Merchant to Mobicred; provided that Mobicred shall be entitled to, in accordance with the provisions of clause 10.2 above, set-off such transaction amount against any amounts due and payable to the Merchant from time to time in accordance with, and subject to, the provisions of Annexure 1 hereto.

#### 15. POST- TERMINATION OR EXPIRATION PROVISIONS

15.1 Upon the termination or expiration (as the case may be) of this Agreement, the Merchant shall:

15.1.1 pay promptly to Mobicred all sums owing in terms of this Agreement by the Merchant to Mobicred as at the date of termination or expiration, which amounts shall become immediately due and payable;

and

- 15.1.2 immediately cease to utilise the Mobicred IP in any manner whatsoever, including on the Website; and
- 15.1.3 immediately cease to make any reference to Mobicred, in any manner whatsoever, in any advertisement, marketing material and the like, regardless of form or media; and
- 15.1.4 immediately return to Mobicred all copies of the Mobicred IP and any stationery, documents, marketing material and the like relating to the Mobicred Offering.

- 15.2 After the termination or expiration of this Agreement, the Merchant undertakes to Mobicred that it shall not utilise the Trademarks or any trade mark or mark which so nearly resembles the Trademarks, so as to likely deceive or cause confusion or which may amount to passing-off.
- 15.3 The Merchant shall maintain all relevant books and records relating to this Agreement for a period of not less than 1 (one) year after the date of termination or expiration of this Agreement.
- 15.4 When this Agreement has been terminated or expires, the clauses in this Agreement will continue to apply to Mobicred Transactions which took place on or before the date on which the termination or expiration of this Agreement took effect. Termination or expiration of this Agreement shall not affect any rights or obligations of the parties which arose on or before the date on which such termination or expiration became effective. In this regard the Merchant undertakes to continue to process any Mobicred Transactions which took place on or before the date on which the termination or expiration of this Agreement took effect ("the Outstanding Mobicred Transactions") and the provisions of this Agreement (including those relating to any Commission payable) shall continue to be and remain of application *mutatis mutandis* in respect of such Outstanding Mobicred Transactions. The provisions of this clause 15 shall be and remain of application until there are no longer any Outstanding Mobicred Transactions remaining.
- 15.5 The Merchant shall furnish to Mobicred, forthwith upon request at any time after the termination or expiration (as the case may be) of this Agreement evidence satisfactory to Mobicred of the Merchant's compliance with the foregoing obligations. The provisions of this clause 15 shall apply *mutatis mutandis* in relation to Mobicred's obligations to the Merchant in terms of clause 15.3 above.

## 16. WAIVER OF LIABILITY AND INDEMNITY

- 16.1 Each party ("Indemnitor") hereby indemnifies the other ("the Indemnitee"), its shareholders, directors, officers, employees, agents, and assignees against any and all direct losses, claims, damages, expenses and costs suffered or incurred by the Indemnitee, howsoever arising and resulting directly or indirectly from an act or omission by or on behalf of the Indemnitor in breach of its obligations or undertakings in terms of this Agreement, unless this has been caused by the misconduct or negligence of Mobicred and/or its employees.
- 16.2 The Merchant specifically indemnifies Mobicred, its shareholders, directors, officers, employees, agents, and assignees against any and all forms of claims and/or liability arising from any dispute of whatsoever cause or nature relating to the sale of any goods and/or the performance of any services by the Merchant to the Mobicred Customer, as may be raised or relied upon by the Mobicred Customer. For purposes of this indemnification, "claims" shall include all obligations, including all forms of taxation, in connection with sales made, actual and consequential damages and costs reasonably incurred in the defence of any claim against Mobicred, including accountants', attorneys' and expert witness fees, costs of investigation and other litigation expenses and travel and living expenses. Mobicred shall have the right to defend any such claim against them. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration of termination of this Agreement
- 16.3 Neither party, its shareholders, directors, officers, employees, agents and assignees will be liable to the other for any direct or indirect losses, costs, expenses, claims, damages, or penalties of whatsoever nature (including any special damages, economic loss, consequential loss or loss of profits) arising, directly or indirectly, from or in relation to this Agreement or the provision by Mobicred of Payment Facilitation Services to the Merchant. The maximum amount which
  - 16.3.1 any Indemnitor under 16.1 above; or
  - 16.3.2 Mobicred under 16.2 above,may claim pursuant to the provisions of this clause is limited to an amount equal to the commission payable by the Merchant to Mobicred in the 12 (twelve) month period immediately preceding the act or omission giving rise to such claim.



- 16.4 In the event of the suspension or termination of the Payment Facilitation Services or any of them for any reason whatsoever, Mobicred shall not be liable for any direct or indirect cost, loss, expense or damage, including any consequential loss, suffered by the Merchant as a result of such suspension and/or termination unless the suspension or termination was due to the willful and/or negligent conduct of Mobicred, its agents and/or employees.

## 17. THE Mobicred IP

- 17.1 It is recorded and agreed that the Mobicred IP (including any and all copyright subsisting from time to time in the Mobicred Offering) vests in Mobicred.
- 17.2 For the duration of this Agreement, unless sooner terminated, Mobicred hereby grants to the Merchant a non-exclusive licence to utilise the Mobicred IP solely for purposes of performing its obligations in terms of this Agreement, in accordance with and subject to the terms and conditions of this Agreement and the standard operating procedures, together with any written instructions and directives from Mobicred from time to time.
- 17.3 The Merchant will not have the right to grant any third party sub-licenses of any rights granted to it in terms hereof.
- 17.4 Mobicred does not warrant that any of the Trademarks that are not registered in the Republic of South Africa ("Unregistered Trade Marks") will be registered or that the use of any of the Unregistered Trade Marks will not infringe the rights of any third party. The Merchant undertakes that it shall not do any act or thing which might or would give cause to invalidate or expunge any registration of title to the Trademarks.
- 17.5 Any unauthorised use or exploitation of the Mobicred IP by the Merchant shall constitute a material breach of this Agreement. The Merchant acknowledges and agrees that all usage or exploitation of the Mobicred IP by the Merchant and any goodwill established thereby shall be for the exclusive benefit of Mobicred and that this Agreement does not confer any goodwill or other interest in the Mobicred IP upon the Merchant (other than the right to use the same in connection with, and subject to the terms and conditions of, this Agreement).
- 17.6 The Merchant agrees and undertakes during the currency of this Agreement:
- 17.6.1 that it shall conduct itself and its business in such a manner as not to harm, detract from or prejudice, or foreseeably harm, detract from or prejudice, in any manner, the Mobicred IP (including the goodwill thereof);
- 17.6.2 to use the Mobicred IP solely in the manner prescribed by Mobicred (including any instructions contained in the standard operating procedures), including the usage and placement thereof on its Website, which shall conform to the specifications of Mobicred, including as to artwork, lettering, colours, size, placement and overall appearance;
- 17.6.3 to adopt and use, for the purpose of this Agreement, at its own expense, any changes in the Mobicred IP as if they were part of the Mobicred IP at the time of execution of this Agreement;
- 17.6.4 not to take any action whatsoever detrimentally affects or prejudices, or which might foreseeably detrimentally affect or prejudice, Mobicred's rights in the Mobicred IP, both during the currency of this Agreement and after the termination or expiration hereof.
- 17.7 The Merchant shall immediately notify Mobicred of any apparent infringement of or challenge to the Merchant's use of the Mobicred IP (or any portion thereof), or claim by any person of any rights in the Mobicred IP (or any portion thereof), and the Merchant shall not communicate with any person other than Mobicred and its attorneys in connection with any such infringement, challenge, or claim. Mobicred shall have sole discretion to take such action as it deems appropriate and the sole right to institute and exclusively control any litigation or other proceeding arising out of any such infringement, challenge, or claim or otherwise relating to any portion of the Mobicred IP. The Merchant agrees to execute any and all instruments and documents, render such assistance and do such acts and things as may, in the reasonable opinion of Mobicred's legal advisors, be necessary or advisable to protect and maintain the interests of Mobicred in the Mobicred IP.
- 17.8 It is further recorded that the rights to and ownership in respect of any trade marks, copyright and any and all intellectual property of whatsoever nature, which may be developed, formulated, created and/or conceptualised by Mobicred during the duration of this Agreement shall be and remain owned solely by Mobicred and the Merchant shall have no claim in respect thereof.

17.9 The Merchant undertakes to ensure that any and all of its employees, agents, contractors, sub-contractors, members and/or directors from time to time shall adhere to and comply in all respects with the provisions of this clause 17.

17.10 The provisions of 17.1 to 17.9 above shall *mutatis mutandis* apply to any intellectual property of the Merchant utilised by Mobicred.

## PART B

### 18. BREACH

#### 18.1 Should:

18.1.1 the Merchant fail to pay any amount due by it to Mobicred in terms of this Agreement on due date for payment thereof; or

18.1.2 the Merchant commit any other breach of any of the terms of this Agreement and fail to remedy such breach within a period of 7 (Seven) days after the receipt of written notice to that effect by Mobicred; or

18.1.3 the Merchant repeatedly breach any of the terms of this Agreement in such manner as to justify Mobicred in holding that the Merchant's conduct is inconsistent with the intention or ability of the Merchant to carry out the terms of this Agreement; or

18.1.4 the Merchant allow any court judgment or arbitration award against it to remain unsatisfied for a period of 7 (seven) days after such court judgment or arbitration award comes to the attention of the Merchant; or

18.1.5 the Merchant commit any act referred to as an act of insolvency in the Insolvency Act No. 24 of 1936 (as amended); or

18.1.6 the board of directors of the Merchant or the members of the Merchant (as the case may be) pass a resolution to begin business rescue proceedings in respect of the Merchant; or

18.1.7 there be executed a founding affidavit for or on behalf of the applicant in any proceedings to be brought against the Merchant to commence business rescue proceedings in respect of the Merchant, or the launching of any such application against the Merchant; or

18.1.8 the Merchant compromises or attempts to compromise or defer payment of any debt owing by the Merchant to any or all of its creditors; or

18.1.9 any assets of the Merchant are attached under a writ of execution and the Merchant fails to stay such execution or such execution remains unfulfilled for more than 30 (thirty) days; or

18.1.10 the Merchant be liquidated (whether provisionally or finally),

then and in any one of such events Mobicred shall, without prejudice to its rights to damages or to any other claim of any nature whatsoever that Mobicred may have against the Merchant as a result thereof:

18.1.11 be entitled to cancel this Agreement; or

18.1.12 to claim specific performance of any obligation of the Merchant whether or not the due date for fulfillment has arrived; or

18.1.13 in the case of 18.1.2 be entitled to remedy such breach and immediately recover the total cost incurred by Mobicred in so doing from the Merchant.

18.2 The provisions of 18.1 above shall *mutatis mutandis* apply in favour of the Merchant in respect of any non-payment, conduct or other act referred to in such clause committed or omitted by Mobicred.

### 19. DISPUTE RESOLUTION

19.1 Any dispute which may arise in terms of, out of, or in connection with or in relation to this Agreement (save in respect of any decision or determination made or certificate issued by any person who acts as an expert and whose decision as such is final and binding on the parties in terms of the provisions of this Agreement) shall be referred to the Chief Executive Officers (or equivalent and or their delegates) of each of the parties or such alternatives as appointed by them, who will negotiate for a period of up to 7 (seven) days (or such longer period as the parties may in writing agree) in an attempt to resolve such dispute. If following the expiry of such 7 (seven) day period the dispute is still unresolved, then the matter shall be dealt with in accordance with the

remaining provisions of this clause 19 .

- 19.2 Subject to the provisions of clause 19.1 above, any dispute arising between the parties out of or in connection with this Agreement or the subject matter of this Agreement (save in respect of any decision or determination made or certificate issued by any person who acts as an expert and whose decision as such is final and binding on the parties in terms of the provisions of this Agreement) shall be finally resolved by arbitration as set out hereunder.
- 19.3 The arbitration shall be governed by the Arbitration Act 42 of 1965 (as amended or replaced from time to time) and shall be conducted in Cape Town, Western Cape in accordance with the Rules of the Arbitration Foundation of South Africa (“AFSA”).
- 19.4 The parties shall agree on the arbitrator. If agreement is not reached within 5 (five) Business Days after either party in writing calls for agreement, the arbitrator shall be such single arbitrator as is nominated by the Registrar of AFSA for the time being.
- 19.5 Each of the parties hereby irrevocably agree that the decision of the arbitrator in the arbitration proceedings:
- 19.5.1 shall be final and binding on each of them; and
  - 19.5.2 will be carried into effect; and
  - 19.5.3 can be made an Order of any Court to whose jurisdiction the parties are subject,
- it being recorded and agreed that the arbitrator shall be entitled to make a decision as to the responsibility for payment of the cost of arbitration.
- 19.6 Nothing herein contained or implied in terms hereof, shall preclude any party from applying to Court for a temporary interdict or other relief of an urgent and temporary nature, pending the decision or award of the arbitrator.
- 19.7 The provisions of this clause 19 are severable from the rest of this Agreement and will remain in effect notwithstanding the termination or invalidity of, for any reason, this Agreement.
- 19.8 The parties shall keep the evidence in any arbitration proceedings and any order made by any arbitrator confidential.

## 20. CONFIDENTIALITY

- 20.1 Each party hereby agrees to at all times hold the provisions of this Agreement and any and all information procured by it in terms of this Agreement (including information in relation to each of their customers respectively) in the strictest confidence (and shall procure that its respective employees and agents hold same in the strictest confidence), including all information which it or they may acquire in relation to the business or affairs of the other party to this Agreement (including the terms and conditions of this Agreement) and shall not utilise or disclose same other than with the prior written consent of that other party or in accordance with the order of a court of competent jurisdiction or as required by any applicable laws, including the NCA.
- 20.2 Parties furthermore undertake to hold any and all information relating to Mobicred Customers, the operation of the Mobicred Offering and the pricing structures and policies of Mobicred in the strictest confidence (and shall procure that its respective employees and agents hold same in the strictest confidence) shall not utilise or disclose same other than with the prior written consent of that other party or in accordance with the order of a court of competent jurisdiction or as required by any applicable law including the NCA
- 20.3 The provisions of this clause will remain in force notwithstanding the expiration or termination of this Agreement for any reason whatsoever.

## 21. NOTICES

- 21.1 Each of the parties chooses domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from this Agreement at their respective physical addresses, facsimile numbers and e-mail addresses recorded in clause 2 of this Agreement.
- 21.2 Any notice to any party shall be addressed to its domicilium aforesaid and either sent by prepaid registered post, delivered by hand or communicated by facsimile or e-mail. In the case of any notice:
- 21.2.1 sent by prepaid registered post, it shall be deemed to have been received on the 5th (fifth) Business Day after posting;

21.2.2 delivered by hand, it shall be deemed to have been received on the date of delivery, provided such date is a Business Day or otherwise on the next following Business Day;

21.2.3 communicated by facsimile or e-mail, it shall be deemed to have been received 1 (one) hour after the time of transmission, provided the day of transmission is a Business Day or otherwise on the next following Business Day.

21.3 Each of the parties shall be entitled from time to time, by written notice to the other to vary its domicilium to any other address in the Republic of South Africa which is not a post office box or poste restante, provided that the change shall become effective only 14 (fourteen) days after service of the notice in question.

21.4 The parties record that whilst they may correspond via email, SMS or instant messaging, no amendment of or variation to this Agreement may be concluded via email, SMS or instant messaging.

## 22. INTERPRETATION

22.1 In this Agreement, words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing persons shall include partnerships, trusts and bodies corporate, and vice versa, and if a word or phrase is defined, its other grammatical forms shall have a corresponding meaning.

22.2 Headings to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

22.3 If any provision in a definition in this Agreement is a substantive provision conferring rights or imposing obligations on any parties, then notwithstanding that it is only in the interpretation clause of this Agreement, effect shall be given to it as if it were a substantive provision in the body of the Agreement.

22.4 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the definitions clause below.

22.5 In this Agreement the word "including" shall mean "including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word", and the word "include" and its derivatives shall be construed accordingly.

22.6 The rule of interpretation that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract shall not apply.

## 23. GENERAL

23.1 Subject to clauses 2.8 and 8 above, no alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all the parties to this Agreement or their duly authorized representatives.

23.2 This Agreement contains the entire agreement between the parties in relation to these presents and no party shall be bound by any undertakings, representations, warranties, promises, terms or conditions or the like not recorded herein.

23.3 Mobicred shall be entitled to appoint any third party to perform any or all of its obligations in terms of this Agreement without the prior written consent of the Merchant first being had and obtained.

23.4 Mobicred shall be entitled to cede, assign and/or transfer any of its rights or obligations in terms of this Agreement to any third party without the prior written consent of the Merchant first being had and obtained.

23.5 The Merchant acknowledges that it has been free to secure independent legal and/or other advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent legal and/or other advice or dispensed with the necessity of doing so. Further, the Merchant acknowledges that all of the provisions of this Agreement are fair and reasonable in all the circumstances.

23.6 No indulgence, leniency or extension of time which either party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.

23.7 Each paragraph, clause, term and provision of this Agreement shall be considered severable and if, for any reason, any part of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation or in terms of a final, binding judgment issued by any court, it shall not impair the

operation of, or have any effect upon such other portions of this Agreement as may otherwise remain valid or intelligible, which shall continue to be given full force and effect and bind the parties hereto.

- 23.8 In the implementation of this Agreement, the parties undertake to observe the utmost good faith and they warrant in their dealings with each other that they shall neither do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interests of any other(s) of them.
- 23.9 The provisions of this Agreement, and the rights and remedies of the parties under this Agreement are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law. No exercise by a party of any one right or remedy under this Agreement, or at law, shall (save to the extent, if any, provided expressly in this Agreement) operate so as to hinder or prevent the exercise by it of any other such right or remedy.
- 23.10 This Agreement shall be binding and enforceable on any successors in title, administrators, trustees, assigns, liquidators, curators or other legal representatives of the parties as fully and effectually as if they had signed this Agreement in the first instance; and reference to any party shall be deemed to include such party's successors in title, administrators, trustees, assigns, liquidators, curators or other legal representatives, as the case may be.
- 23.11 This Agreement is subject to the South African laws and the parties submit to the non-exclusive jurisdiction of the Western Cape High Court, Cape Town.
- 23.12 This Agreement supersedes and invalidates any other agreement relating to the subject matter hereof which may have been made by the parties (either orally or in writing) prior to the date of last signature hereof.

#### 24. PROTECTION OF PERSONAL INFORMATION

- 24.1 In this clause 24, unless inconsistent with the context, the following words and expressions shall bear the meanings assigned thereto and cognate words and expressions shall bear corresponding meanings:
- 24.1.1 **"Personal Information"** shall have the meaning ascribed to it in Chapter 1 of POPI;
- 24.1.2 **"Privacy and Data Protection Conditions"** shall mean the 8 (eight) statutory prescribed conditions for the lawful Processing of Personal Information which is entered into Record and such conditions are listed in Section 4(1) of POPI and are dealt with in detail in Part A of Chapter 3 of POPI;
- 24.1.3 **"POPI"** means the Protection of Personal Information Act, No 4 of 2013, as amended from time to time, including any regulations and/or code of conduct made under the Act;
- 24.1.4 **"Processing"** shall have the meaning ascribed to it in Chapter 1 of POPI;
- 24.1.5 **"Recipient"** means the Party receiving any Confidential Information.
- 24.1.6 **"Record"** shall have the meaning ascribed to it in Chapter 1 of POPI;
- 24.1.7 **"Responsible Party"** shall have the meaning ascribed to it in Chapter 1 of POPI;
- 24.2 The Parties shall fully comply with their statutory obligations contained in POPI when Processing Personal Information obtained by the Responsible Party and such Personal Information is entered into a Record. Without limiting the generality of the aforesaid the Responsible Party shall ensure that the Privacy and Data Protection Conditions are strictly adhered to when Processing the Data Subject's Personal Information.
- 24.3 The Parties indemnify and hold each other harmless from any direct liability arising from their failure to comply with its statutory obligations contained in POPI, whether as Receiver or Disclosing Party.