



mobicred (Pty) Ltd
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 Cape Town, South Africa, 8000
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MERCHANT AGREEMENT ENTERED INTO BETWEEN mobicred (PTY) LTD AND:

- 1 The Merchant: _____ of care of:
 - 1.1 Physical Address: _____;
 - 1.2 Fax Number: _____;
 - 1.3 Email Address: _____;
 - 1.4 Telephone: _____.
- 2 Registration Number of the Merchant: _____
- 3 Trading name of the Merchant (if any): _____.

The Merchant hereby appoints mobicred to provide Payment Facilitation Services and mobicred accepts such appointment, on the terms and conditions contained in this Agreement.

SIGNED AS FOLLOWS:

Place	Date	mobicred (PTY) LTD per Director who warrants that he or she is duly authorised hereto
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Place	Date	MERCHANT per signatory who warrants that he or she is duly authorised hereto
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MERCHANT AGREEMENT

1. INTRODUCTION

- 1.1 The Merchant trades in, *inter alia*, 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: NCRCP6523) entering into Credit Agreements with mobicred Account Holders.
- 1.3 The Merchant wishes to facilitate:
 - 1.3.1 the entering into of Credit Agreements and the provision by mobicred of access to credit facilities to users of the Website; and
 - 1.3.2 the use by mobicred Account Holders of funds made available to them by mobicred pursuant to such Credit Agreements to discharge the Purchase Price of goods and/or services purchased by mobicred Account Holders from the Merchant via the Website.
- 1.4 mobicred and the Merchant (collectively, 'the parties') wish to enter into an agreement in terms whereof:
 - 1.4.1 mobicred will be appointed by the Merchant to perform Payment Facilitation Services for the Merchant;
 - 1.4.2 the Merchant will integrate itself into the mobicred API or a Payment Gateway will integrate itself into the Website(s) and into the mobicred API, as the case may be, in order to facilitate the performance by mobicred of such Payment Facilitation Services; and
 - 1.4.3 mobicred will grant to the Merchant a non-exclusive license to utilise the mobicred IP on the Website, subject to the terms and conditions as contained in this Agreement.
- 1.5 The parties wish to record the terms and conditions of their agreement in writing and do so in terms of this Agreement.

2. INTERPRETATION

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 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.
- 2.5 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.
- 2.6 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.

3. 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:

- 3.1 "Agreement" refers to this merchant agreement, together with all Annexures hereto; provided that in the event of a conflict between any provision in this merchant agreement and any of the Annexures hereto, this merchant agreement shall prevail.



- 3.2 "Approved mobicred Transaction" refers to a mobicred Transaction:
 - 3.2.1 which has been pre-authorised and approved by mobicred in accordance with the Purchase Pre-authorisation Procedures; and
 - 3.2.2 which has been approved by the Merchant in accordance with the Approval Procedures; and
 - 3.2.3 in relation to which the particular mobicred Account Holder's account with mobicred has been debited by an amount equal to the Purchase Price.
- 3.3 "Approval Procedures" refers to the approval procedures in respect of a mobicred Transaction, as detailed in the Standard Operating Procedures.
- 3.4 "Business Day" (as opposed to a "trading day", as defined in Annexure 1 hereto) refers to any day other than a Saturday, Sunday or public holiday in the Republic of South Africa.
- 3.5 "Commission" refers to the commission payable by the Merchant to mobicred in respect of Approved mobicred Transactions, as contemplated further in clause 15 below.
- 3.6 "CPA" refers to the Consumer Protection Act, No. 68 of 2008 and the Regulations thereto, as amended or replaced from time to time.
- 3.7 "Credit Agreement" refers to the written credit agreement entered into between mobicred and the mobicred Account Holder in terms whereof, *inter alia*, mobicred provides access to a credit facility to the mobicred Account Holder on the terms and subject to the conditions as are contained in such written credit agreement;
- 3.8 "Go Live Date" refers to the 1st (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, as contemplated further in clause 6 below.
- 3.9 "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;
- 3.10 "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.
- 3.11 "Merchant" refers to the entity referred to as "the Merchant" on the first page of this Agreement of care of the physical address, facsimile number and e-mail address recorded on such page.
- 3.12 "mobicred" refers to mobicred (Pty) Ltd (Registration No. 2012/163391/07) of care of:
 - 3.12.1 physical address: 14th Floor, 1 Thibault Square, Cape Town 8001;
 - 3.12.2 facsimile number: 0862060810; and
 - 3.12.3 e-mail address: merchantservices@mobicred.co.za.
- 3.13 "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
 - 3.14.3 who is liable for payment to mobicred for all debits, charges, and outstanding amounts incurred in respect of such mobicred account.
- 3.14 "mobicred API" refers to the mobicred application programming interface, as contemplated more fully in the Integration Guide.
- 3.15 "mobicred IP" refers to mobicred's right, title and interest in and to any and all of its logos, trade names, trading styles and Trademarks, whether registered or not or whether reduced to material form or otherwise, that are to be utilised by the Merchant from time to time pursuant to this Agreement.



- 3.16 “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;
- 3.17 “mobicred Programme” 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.
- 3.18 “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.
- 3.19 “NCA” refers to the National Credit Act, No. 34 of 2005 and the Regulations thereto, as amended or replaced from time to time.
- 3.20 “Nominated Bank Account” refers to:
- 3.20.1 the bank account details of the Merchant, as set out in the Settlement Annexure 1; or
 - 3.20.2 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 5th (Fifth) Business Day following receipt by mobicred of the written notice as aforesaid.
- 3.21 “Payment Gateway” refers to the person or entity who is 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.
- 3.22 “Merchant Payment Gateway Agreement” means the agreement entered into between the Merchant and a payment gateway in terms whereof, *inter alia*, the payment gateway is appointed by the Merchant to facilitate 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.
- 3.23 “Payment Facilitation Services” refers to the payment facilitation services performed by Mobicred for the Merchant in terms whereof:
- 3.23.1 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
 - 3.23.2 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.
- 3.24 “Purchase Pre-authorisation Procedures” refers to the manner in which mobicred Transactions are pre-authorised by mobicred from time to time, as detailed in the Standard Operating Procedures.
- 3.25 “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:
- 3.25.1 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
 - 3.25.2 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
 - 3.25.3 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).
- 3.26 “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 14, as read with clauses 16 or 17 below (as the case may be).



- 3.27 "Standard Operating Procedures" or "SOP" refers to the document annexed hereto as Annexure 2, subject to the provisions of clause 10 below and shall include a reference to any document substituted as Annexure 2 by mobicred from time to time.
- 3.28 "Trademarks" refers to the trademarks of mobicred (whether registered or not) detailed in the Standard Operating Procedures.
- 3.29 "Website" refers to the website(s) from which the Merchant sells, or will sell, its goods and/or services to mobicred Account Holders.

4. APPOINTMENT AND APPROVAL

- 4.1 mobicred hereby approves the Merchant for purposes of providing goods and/or services to mobicred customers and facilitating the discharge by mobicred of the Purchase Price for and on behalf of such mobicred customers, subject to the terms and conditions contained in this Agreement.
- 4.2 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.
- 4.3 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.

5. DURATION

This Agreement shall commence on the date of last signature hereof ("the Signature Date") and shall endure for an initial period of 6 (six) months ("the initial period") reckoned from the Go-Live Date and shall thereafter endure indefinitely, subject to termination by either party on 1 (one) month's written notice to the other party, which notice may be given at any time after the initial period.

6. INTEGRATION

- 6.1 In order to enable mobicred to provide Payment Facilitation Services to the Merchant in the manner contemplated in this Agreement:
 - 6.1.1 the Merchant will be required to successfully complete the Integration Process in accordance with the Integration Guide in the event that a Payment Gateway has not been appointed by mobicred and the Merchant; or
 - 6.1.2 the Payment Gateway will be required to successfully complete the Integration Process in accordance with the Integration Guide in the event that the Payment Gateway has been appointed by mobicred and the Merchant.
- 6.2 If:
 - 6.2.1 the provisions of clause 6.1.1 above are of application, then the Merchant undertakes to commence the Integration Process forthwith after the Signature Date and to expeditiously attend to its completion in order to ensure that the Go-Live Date is achieved as soon as possible after the Signature Date; or
 - 6.2.2 the provisions of clause 6.1.2 above are of application, then the Merchant undertakes to utilise its best commercial endeavours, with effect from the later of the dates on which the Merchant concludes a Merchant Payment Gateway Agreement with the Payment Gateway and this Agreement with mobicred, to:
 - 6.2.2.1 facilitate the integration of the Payment Gateway forthwith into the Website by way of, *inter alia*, the insertion of Frame(s) therein; and
 - 6.2.2.2 expeditiously attend to the completion of the Integration Process in order to ensure that such integration is completed as soon as possible thereafter.
- 6.3 mobicred will advise the Merchant in writing once it has determined, in its sole and absolute discretion, that the Integration Process has been completed ("the Approval Notice"). For the sake of clarity and the avoidance of any doubt, the Integration Process will only be deemed to be successfully completed, and the Go-Live Date will only commence, on the date on which the Merchant receives the Approval Notice.



6.4 The Merchant shall be and remain solely responsible for any and all costs incurred by it in connection with the completion of the Integration Process.

7. APPOINTMENT OF THE PAYMENT GATEWAY (TO THE EXTENT APPLICABLE)

If a Payment Gateway has been appointed by the Merchant and mobicred, and the Merchant Payment Gateway Agreement and mobicred Payment Gateway Agreement entered into with such Payment Gateway are both in force and effect then, notwithstanding anything to the contrary contained herein:

7.1 all communications, notifications and the like between mobicred and the Merchant relating to the initiation, pre-authorisation, approval, cancellation and refunding of mobicred Transactions in terms of this Agreement (including in terms of clauses 3.2, 3.24, 9.10, 11, 12, 14, 16.1.2, 16.1.3 and 16.2) shall take place through the mobicred API and shall be conducted via the Payment Gateway;

7.2 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

7.3 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,

provided that the provisions of this clause 7 shall not apply to any notifications, communications and the like which, having regard to the nature and/or content and/or manner of communication thereof, could not take place through the Payment Gateway or the mobicred API (including those detailed in clauses 3.20, 6.3, 9.2, 9.6, 9.17, 9.18, 9.20, 10, 16.1.6, 16.3, 17.2, 17.3, 18, 19, 20.7, 21 and 25 and clause 1.7 of Settlement Annexure 1 hereto).

8. WARRANTIES AND UNDERTAKINGS OF mobicred

mobicred warrants and undertakes to the Merchant that:

8.1 it is duly incorporated and validly existing under the laws of South Africa;

8.2 it has the legal capacity and power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of this Agreement;

8.3 the mobicred IP and the mobicred Programme are the sole and exclusive property of mobicred;

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

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

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

8.7 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 Programme and the performance of the Payment Facilitation Services.

9. GENERAL RIGHTS AND OBLIGATIONS OF THE MERCHANT

The Merchant undertakes to:

9.1 utilise the Payment Facilitation Services strictly in accordance with, and to comply at all times with, the Standard Operating Procedures;

9.2 furnish mobicred with a copy of any Merchant Payment Gateway Agreement forthwith after the date of last signature thereof. This undertaking shall apply *mutatis mutandis* to any amendments, supplementations, variations and the like to such Merchant Payment Gateway Agreement from time to time;

9.3 notify mobicred:

9.3.1 immediately in the event that the Payment Gateway breaches, or is reasonably suspected by the Merchant of having breached, any Merchant Payment Gateway Agreement (including the nature and extent of any such breach or suspected breach, as the case may be);



- 9.3.2 immediately in the event that the Merchant breaches, or could be reasonably suspected of having breached, any Merchant Payment Gateway Agreement;
- 9.3.3 prior to the termination or expiry of any Merchant Payment Gateway Agreement, of such impending termination or expiration. In this regard the Merchant undertakes further to:
 - 9.3.3.1 in the case of the expiry of any Merchant Payment Gateway Agreement, furnish mobicred with such notification at least 6 (Six) months prior to the expiry thereof; and
 - 9.3.3.2 in the case of the termination of any Merchant Payment Gateway Agreement, furnish mobicred with such notification as soon as is reasonably possible after the determination to terminate the Merchant Payment Gateway Agreement was made;
- 9.4 maintain commercially reasonable business practices in conjunction with use of the Payment Facilitation Services including:
 - 9.4.1 maintaining the Website in good order and timeously fulfilling all orders for goods and/or services sold by it to mobicred Account Holders;
 - 9.4.2 reviewing mobicred Transactions on a regular basis and notifying mobicred immediately of any suspected unauthorized activity in respect thereof;
- 9.5 ensure that the terms and conditions pursuant to which it supplies goods and/or services to mobicred Account Holders do not:
 - 9.5.1 afford the Merchant or the mobicred Account Holder, as the case may be, any rights; or
 - 9.5.2 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;
- 9.6 utilise its best commercial endeavours to comply with any and all guidance (if any) furnished by mobicred to the Merchant from time to time during the currency of this Agreement. Such guidance may be in the form of bulletins and other written materials, videos, training aids, telephonic and e-mail consultations, training and/or consultations at the premises of either the Merchant or mobicred;
- 9.7 process the relevant mobicred Transaction in accordance with the terms and conditions of this Agreement;
- 9.8 retain a transaction history 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 pre-authorisation of each such mobicred Transaction (as contemplated further in clause 11 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;
- 9.9 comply with and adhere to the Purchase Pre-authorisation Procedures and the Approval Procedures in respect of each mobicred Transaction;
- 9.10 not transact with a mobicred Account Holder, or allow a mobicred Transaction to occur, where no such pre-authorisation and/or approval (as contemplated in clause 9.9 above) has been obtained by the Merchant from mobicred or the Payment Gateway for and on behalf of mobicred (as the case may be), in respect of the mobicred Transaction;
- 9.11 not transact or allow a mobicred Transaction to occur where a mobicred Transaction has not been initiated by a mobicred Account Holder;
- 9.12 supply each mobicred customer with a written invoice associated with each and every mobicred Transaction noting, *inter alia*, that mobicred was selected by the mobicred Account Holder to discharge the Purchase Price for and on the mobicred Account Holder's behalf, forthwith after having concluded the mobicred Transaction with the mobicred customer;
- 9.13 not grant, nor enter into any agreement of any nature whatsoever with any mobicred customer in terms whereof the Merchant is under an obligation to grant, any cash or any other discount(s) to mobicred customers;



- 9.14 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 or other refund 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;
- 9.15 not permit the mobicred customer to utilise, or assist the mobicred customer in utilising, the Credit Agreement in conjunction with, or as an additional form of credit or loan with, any other credit finance facility or other agreement of whatsoever nature or source as may be available to either the mobicred Account Holder and/or the Merchant (including as a form of securing a deposit, facilitating split transactions or supplementing the Credit Agreement) to the extent that same is intended to complete and/or finance the purchase of the goods and/or services purchased in terms of the mobicred Transaction;
- 9.16 not allow any other merchant to use the Merchant number and/or password furnished to it during the Integration Process, whether to facilitate the unauthorised use of the mobicred API, or for any other reason whatsoever. In the event of a breach by Merchant of this undertaking the Merchant undertakes to, without prejudice to any of mobicred's rights in terms of this Agreement (including its rights in terms of clause 19 below) pay to mobicred forthwith on demand any and all amounts paid by mobicred to the Merchant pursuant to such breach and, in cases where mobicred in its reasonable discretion deems same appropriate, mobicred shall be entitled to suspend the Merchant's use of the mobicred API (whether via the Payment Gateway, or otherwise);
- 9.17 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;
- 9.18 obtain the prior written consent of mobicred before including any reference to this Agreement, mobicred, the mobicred customers or the mobicred Programme (including the main benefits available in terms of the mobicred Programme) in its advertising or marketing material or in any promotional, advertising or marketing campaign of whatsoever nature;
- 9.19 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 Programme;
- 9.20 promptly bring to the attention of mobicred in writing, any information received by it which is reasonably likely to be of use or benefit to mobicred including:
 - 9.20.1 with regards to the investigation of any fraudulent activity of any nature whatsoever in relation to any mobicred Transaction or any mobicred Account Holder; or
 - 9.20.2 which indicates the possibility of fraud being committed in respect of any mobicred Transaction, or by or in respect of any mobicred Account Holder, or the attempted commission of fraud, and/or the attempted utilisation of a mobicred account in a fraudulent and/or deceitful manner.

10. THE STANDARD OPERATING PROCEDURES

mobicred shall be entitled to supplement, vary, amend, modify and/or replace all or any portion of the Standard Operating Procedures (as defined in clause 3.27 above) from time to time; provided that:

- 10.1 mobicred shall notify the Merchant in writing of such supplementation, variation, amendment, modification and/or replacement of or to the Standard Operating Procedures (as the case may be) ("the SOP Notification"); and
- 10.2 such supplementation, variation, amendment, modification and/or replacement of or to the Standard Operating Procedures (as the case may be) shall only become effective after the 5th (Fifth) Business Day following receipt by the Merchant of the SOP Notification.

11. PRE-AUTHORISATIONS OF mobicred TRANSACTIONS

- 11.1 All pre-authorisations of mobicred Transactions by mobicred will only occur in real-time via the mobicred API in accordance with the Purchase Pre-authorisation Procedures. No offline mobicred Transactions will be allowed, supported or pre-authorized.



- 11.2 The Merchant undertakes to, in respect of each mobicred Transaction, always obtain pre-authorisation from mobicred or the Payment Gateway for and on behalf of mobicred (as the case may be), strictly in accordance with the Purchase Pre-authorisation Procedures prior to confirming such mobicred Transaction with the mobicred Account Holder.
- 11.3 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, and subject to the terms and conditions, contemplated further in the Standard Operating Procedures and the Integration Guide. All subsequent pre-authorisation, cancellation, approval and refund requests in respect of a mobicred Transaction via the mobicred API will make reference to the same reference number furnished by mobicred to the Merchant or the Payment Gateway for and on behalf of the Merchant (as the case may be) in respect of the particular mobicred Transaction.
- 11.4 Each reference number issued by mobicred in the manner contemplated in clause 11.3 above does not expire. Notwithstanding the aforesaid, any pre-authorisation will be automatically cancelled by mobicred and become of no force and effect if the mobicred Transaction in respect of which a particular reference number was issued is not approved by the Merchant within 60 (sixty) days of the date of issue thereof in accordance with the provisions of clause 12 below.
- 11.5 mobicred shall not be obliged to honour any 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).
- 11.6 The Merchant may not split or disguise any mobicred Transaction or act in any way so as to avoid obtaining pre-authorisation.

12. APPROVAL OF PRE-AUTHORISED mobicred TRANSACTIONS

Approval of pre-authorised mobicred Transactions by the Merchant or the Payment Gateway for and on behalf of the Merchant (as the case may be) will occur in real-time via the mobicred API in accordance with the Approval Procedures.

13. PAYMENTS IN RESPECT OF APPROVED mobicred TRANSACTIONS

- 13.1 mobicred shall, subject to the provisions of this clause 13 and clauses 15, 16 and 17 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, in accordance with, and subject to, the provisions of Settlement Annexure 1 hereto.
- 13.2 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 amounts due and payable from whatsoever cause by the Merchant to mobicred in terms of this Agreement (including any Commission contemplated in clause 15 below and any amount due and payable by the Merchant to mobicred in accordance with clauses 16 and/or 17 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 13.2.
- 13.3 For the sake of clarity and the avoidance of any doubt, payment by mobicred to the Merchant in the manner contemplated in this clause 13 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.

14. REFUNDS AND CANCELLATIONS IN RESPECT OF mobicred TRANSACTIONS and APPROVED mobicred TRANSACTIONS



- 14.1 Should a refund or cancellation of any nature whatsoever be required to be made 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 13.2 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.
- 14.2 For the sake of clarity and the avoidance of any doubt, mobicred shall be entitled to effect a Refund in respect of any mobicred Transaction or Approved mobicred Transaction in respect of which a refund or cancellation request is made.

15. COMMISSION

- 15.1 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.
- 15.2 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.
- 15.3 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.

16. INVALID mobicred TRANSACTIONS

- 16.1 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:
 - 16.1.1 the underlying transaction is illegal or is reasonably suspected by mobicred of being illegal; or
 - 16.1.2 pre-authorisation and/or 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 11.1 or 12 above (as the case may be); or
 - 16.1.3 the Merchant utilises an 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) as contemplated further in clause 11.3 above; or
 - 16.1.4 the Merchant fails to adhere to the provisions of this Agreement, or any of them (including, for the avoidance of any doubt, the Standard Operating Procedures); or
 - 16.1.5 the Related Payment Gateway fails to adhere to the provisions of the mobicred Payment Gateway Agreement, or any of them; or
 - 16.1.6 the Merchant or the Related Payment Gateway (as the case may be) fails to utilise its best commercial endeavours to comply with any guidance furnished by mobicred to the Merchant or the Related Payment Gateway (as the case may be); or



- 16.1.7 the Merchant or the Related Payment Gateway (as the case may be) fails or is unable, within any retention period referred to in clause 9.8 above, to produce any documentation or information relating to any specific mobicred Transaction;
- 16.1.8 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.
- 16.2 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.
- 16.3 mobicred shall be entitled, on written notice to the Merchant or in the manner contemplated in clause 16.2 (as the case may be) and provided that it is not disputed by the Merchant in the manner contemplated in clause 18 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:
 - 16.3.1 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
 - 16.3.2 mobicred shall be entitled to, in accordance with the provisions of clause 13.2 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.

17. IRREGULAR mobicred TRANSACTIONS

- 17.1 For the purposes of clause 17.2 an "irregular mobicred transaction" shall mean any mobicred Transaction:
 - 17.1.1 arising from the fraudulent use of a mobicred account by the Payment Gateway (if any), the Merchant or any director, member, employee, contractor or representative of the Merchant or the Payment Gateway (as the case may be); or
 - 17.1.2 which was processed or effected in any way which conflicts or differs from the way in which:
 - 17.1.2.1 the Payment Gateway is, to the extent applicable, authorised to process mobicred Transactions in terms of the mobicred Payment Gateway Agreement; or
 - 17.1.2.2 the Merchant is authorised to process or effect mobicred Transactions in terms of this Agreement.
- 17.2 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.
- 17.3 Unless otherwise disputed by the Merchant in the manner contemplated in clause 18 below or (to the extent applicable) the Payment Gateway in terms of the Payment Gateway Merchant Agreement, mobicred shall be entitled, on written notice to the Merchant in the manner contemplated in clause 17.2 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 13.2 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 Settlement Annexure 1 hereto.
- 17.4 mobicred shall have no obligation whatsoever to pay the Merchant any amount in respect of any irregular mobicred transaction.

18. DISPUTE RESOLUTION



- 18.1 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) of each of the parties or such alternatives as appointed by them, who will negotiate for a period of up to 7 (seven) days 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 18.
- 18.2 Subject to the provisions of clause 18.1 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.
- 18.3 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").
- 18.4 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.
- 18.5 Each of the parties hereby irrevocably agree that the decision of the arbitrator in the arbitration proceedings:
 - 18.5.1 shall be final and binding on each of them; and
 - 18.5.2 will be carried into effect; and
 - 18.5.3 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.
- 18.6 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.
- 18.7 The provisions of this clause **18** are severable from the rest of this Agreement and will remain in effect notwithstanding the termination or invalidity of, for any reason, this Agreement.
- 18.8 The parties shall keep the evidence in any arbitration proceedings and any order made by any arbitrator confidential.

19. BREACH

Should:

- 19.1 the Merchant fail to pay any amount due by it to mobicred in terms of this Agreement on due date for payment thereof; or
- 19.2 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
- 19.3 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
- 19.4 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
- 19.5 the Merchant commit any act referred to as an act of insolvency in the Insolvency Act No. 24 of 1936 (as amended); or
- 19.6 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



- 19.7 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
 - 19.8 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
 - 19.9 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
 - 19.10 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:
- 19.11 be entitled to cancel this Agreement; or
 - 19.12 to claim specific performance of any obligation of the Merchant whether or not the due date for fulfillment has arrived; or
 - 19.13 in the case of 19.2 be entitled to remedy such breach and immediately recover the total cost incurred by mobicred in so doing from the Merchant.

20. THE mobicred IP

- 20.1 It is recorded and agreed that the mobicred IP (including any and all copyright subsisting from time to time in the mobicred Programme) vests in mobicred.
- 20.2 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 SOP, together with any written instructions and directives from mobicred from time to time.
- 20.3 The Merchant will not have the right to grant any third party sub-licenses of any rights granted to it in terms hereof.
- 20.4 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.
- 20.5 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).
- 20.6 The Merchant agrees and undertakes during the currency of this Agreement:
 - 20.6.1 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);
 - 20.6.2 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;
 - 20.6.3 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;
 - 20.6.4 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.



- 20.7 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.
- 20.8 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.
- 20.9 The Merchant hereby irrevocably assigns to mobicred any and all present and future right title and interest in and to any copyright in any existing or future works or part thereof of whatsoever nature that the Merchant individually or jointly with any other person will make or will create relating directly to the mobicred IP. In the interpretation of the foregoing "work" shall mean any work as contemplated in the Copyright Act No. 98 of 1978.
- 20.10 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 20.

21. POST-TERMINATION OR EXPIRATION PROVISIONS

- 21.1 Upon the termination or expiration (as the case may be) of this Agreement, the Merchant shall:
- 21.1.1 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
 - 21.1.2 immediately cease to utilise the mobicred IP in any manner whatsoever, including on the Website; and
 - 21.1.3 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
 - 21.1.4 immediately return to mobicred all copies of the mobicred IP and any stationery, documents, marketing material and the like relating to the mobicred Programme.
- 21.2 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.
- 21.3 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 to allow mobicred to (to the extent necessary) make a final inspection of the Merchant's books and records for the purpose of verifying that all payments have been correctly made.
- 21.4 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.
- 21.5 Should the Merchant continue to process any mobicred Transaction after the termination or expiration (as the case may be) of this Agreement, then in such event, and notwithstanding the fact that mobicred may have pre-authorized or approved such mobicred Transaction, no amounts of any nature whatsoever shall be or become due and payable by mobicred to the Merchant in respect thereof.



- 21.6 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 21.6 shall be and remain of application until there are no longer any Outstanding mobicred Transactions remaining.
- 21.7 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 21.7 shall apply *mutatis mutandis* in relation to mobicred's obligations to the Merchant in terms of clause 21.3 above.

22. WAIVER OF LIABILITY AND INDEMNITY

- 22.1 The Merchant hereby indemnifies mobicred, its shareholders, directors, officers, employees, agents, and assignees against any and all direct and indirect losses, claims, damages, expenses and costs suffered or incurred by mobicred, howsoever arising and resulting directly or indirectly from an act or omission by or on behalf of the Merchant 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.
- 22.2 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
- 22.3 mobicred, its shareholders, directors, officers, employees, agents and assignees will not be liable to the Merchant 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.
- 22.4 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.

23. CESSION, ASSIGNMENT AND SALE OF BUSINESS

- 23.1 The Merchant shall not be entitled to cede, assign and/or transfer any of its rights or obligations in terms of this Agreement without the prior written consent of mobicred first being had and obtained.
- 23.2 For the purposes of clause 23.1 the sale, transfer or disposal (in any manner whatsoever) of :
- 23.2.1 any shares or members interest (as the case may be) in the Merchant or change in the issued share capital or share capital structure or interest (as the case may be) of the Merchant (existing as at the Signature Date); or
- 23.2.2 the business of the Merchant conducted via the Website, shall be deemed to be an assignment by the Merchant of its rights and obligations in terms of this Agreement.

24. CONFIDENTIALITY



- 24.1 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 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.
- 24.2 The Merchant furthermore undertakes to hold any and all information relating to mobicred customers, the operation of the mobicred Programme 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
- 24.3 The provisions of this clause will remain in force notwithstanding the expiration or termination of this Agreement for any reason whatsoever.

25. NOTICES

- 25.1 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 3 of this Agreement.
- 25.2 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:
- 25.2.1 sent by prepaid registered post, it shall be deemed to have been received on the 5th (fifth) Business Day after posting;
- 25.2.2 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;
- 25.2.3 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.
- 25.3 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.
- 25.4 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.

26. CO-OPERATION

Each of the parties hereby undertakes to:

- 26.1 do, and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and
- 26.2 pass, and to procure the passing of all such resolutions of directors or members of any body corporate, to the extent that the same may lie within such party's power and may be required to give effect to the import or intent of this Agreement, or any contract concluded pursuant to the provisions of this Agreement.

27. GENERAL

- 27.1 Subject to clauses 3.9 and 10 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.
- 27.2 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.



- 27.3 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.
- 27.4 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.
- 27.5 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.
- 27.6 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.
- 27.7 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.
- 27.8 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.
- 27.9 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.
- 27.10 This Agreement may be signed in separate counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. A counterpart of this Agreement in facsimile form shall be evidence of the original signature and shall be as effective in law as the counterparts in original form showing the original signatures.
- 27.11 This Agreement shall be binding and enforceable on any successors in title, estates, heirs, executors, 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, estate, heirs, executors, administrators, trustees, assigns, liquidators, curators or other legal representatives, as the case may be.
- 27.12 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.
- 27.13 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.

28. COSTS

Each of the parties shall bear their own costs and incidental of the negotiation, preparation and conclusion of this Agreement.