



## PAYU MERCHANT SERVICE TERMS

### General Information

**THIS AGREEMENT ("Agreement")** is entered into between:

- (1) **PayU Payments Nigeria Limited (PayU)**, having its registered office at Plot 1381 Tiamiyu Savage Street, Victoria Island, Lagos, registration number 1173950); and
- (2) **Merchant** as specified in the PayU Enrolment Form.

Reference to a "**Party**" or "**Parties**" will be to PayU and the Merchant, as appropriate.

### Acknowledgment of the Agreement

1. This Agreement sets out the details of the Services to be provided by PayU to the Merchant.
2. By its signature of the PayU Enrolment Form or by using the Services, the Merchant acknowledges and agrees that the Services are provided subject to:
  - a. the terms of this Agreement; and
  - b. the Enrolment Form and any applicable specific service terms available on PayU Nigeria's website..
3. The Agreement will be effective on the date it has been signed by all Parties.
4. The Merchant will select the Services in the PayU Enrolment Form.
5. The Merchant acknowledges that it has access to, has read and agrees to be bound by the terms of the Agreement.

### NOW THIS DEED WITNESSES AS FOLLOWS:

#### 1. GENERAL

- 1.1. This Agreement sets out the basis on which Services (all capitalised terms defined below in clause 2) are provided to the Merchant by PayU. This Agreement may be supplemented by specific terms approved and notified by PayU to the Merchant in writing or on the PayU Websites from time to time.
- 1.2. PayU may sub-contract or delegate the performance of its obligations under this Agreement to third parties including any of its Affiliates; however PayU shall remain responsible for the performance of such duties.
- 1.3. In the event of a conflict between this Agreement and Enrolment Form, then the Agreement shall prevail.
- 1.4. The Agreement constitutes the entire agreement between the Parties in respect of the Services and supersedes any such previous agreement, whether express or implied.

## 2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement:

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

"**Agreement**" means this Agreement, Commercial Sheet, any Service supplements, appendices, amendments, modifications, extensions and revisions.

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

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

"**Card Issuer**" means a financial institution that issues cards under the authority of the relevant Payment Scheme.

"**CBN**" means the Central Bank of Nigeria.

"**Chargeback**" means a circumstance where a Card Issuer, Payment Scheme or other financial institution requires repayment in respect of a transaction previously settled and/or remitted to the Merchant, notwithstanding that authorisation may already have been obtained.

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

"**Commercial Sheet**" means the document given that name that details the Services and the Fees.

"**Customer**" means a customer of the Merchant in relation to a payment transaction processed using the Services.

"**Customer Data**" means Data relating to Customers that (a) the Merchant provides to PayU in connection with the Services; or (b) PayU generates on the basis of those data.

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

"**Fees**" means all fees, charges and other payments to be made by the Merchant to PayU from time to time.

"**Fines**" means any and all fines, levies, costs, expenses, charges, assessments or imposition of liabilities of any nature which the Payment Schemes or other financial institution require either the Merchant or PayU to pay or which are otherwise directly or indirectly recovered from PayU at any time and which relate to any aspect of this Agreement (including the provision of the Services hereunder).

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

"**Merchant Bank Account**" has the meaning given to it in clause 5.3.

**"Payment"** means the relevant payment due to the Merchant from PayU on the Payment Date in respect of the transactions.

**"Payment Date"** means each date when the PayU shall submit the payment of the collected funds to the Merchant in accordance with this Agreement. PayU will from time to time notify the Merchant of the schedule of Payment Dates.

**"Payment Scheme"** means Visa and/or MasterCard (including any local schemes thereof) and/or such other schemes governing the issue and use of credit, debit, charge, purchase or any other cards or payment methods, as approved and notified by PayU to the Merchant in writing or on the PayU Websites from time to time;

**"Payment Scheme Rules"** means any and all applicable rules, regulations, standards and operating guidelines issued by any Payment Scheme, as amended and restated from time to time.

**"PayU Websites"** means [www.payu.com.ng](http://www.payu.com.ng) and each of the PayU international sites available therefrom.

**"Refund"** means a return of an amount to a customer's account or the reversal of any other payment pursuant to a request or instruction from the Merchant to PayU.

**"Services"** means the processing, reconciling and reporting of payment transactions, related operations and any other services detailed in this Agreement or as otherwise approved and notified by PayU to the Merchant in writing, or on the PayU Websites from time to time.

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

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

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

2.2.3 a "Clause" or a **"Schedule"** is, unless the context otherwise requires, a reference to a Clause in or a Schedule to this Agreement.

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

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

### 3. RIGHTS AND OBLIGATIONS OF PAYU

3.1 PayU will, in consideration for the Fees, provide one or more of the Services with reasonable skill and care, in accordance with and for the duration of this Agreement. Services will be provided in accordance with Applicable Law and Payment Scheme Rules.

3.2 PayU will not be obliged to provide any Services unless and until it notifies the Merchant of their agreement to do so in writing.

- 3.3 PayU may cancel, suspend or modify one, some or all of the Services without prior notice and with immediate effect if PayU or any Payment Scheme, in its reasonable opinion, considers it necessary or desirable to do so. PayU will notify the Merchant as soon as possible of any such cancellation, suspension or modification.
- 3.4 In order to ensure continuance compliance with the requirements of the CBN, the Merchant understands and accepts that PayU provides its Services subject to the written approvals, directives, notices or authorisations as may be issued by the CBN directly to PayU from time to time. The Merchant further accepts that PayU may make any such changes to the Services or this Agreement as are strictly necessary to ensure compliance with the CBN and the continuous provision of the Services to the Merchant.

#### **4. PAYMENTS**

- 4.1. PayU shall, on each Payment Date, send by direct bank transfer to the Merchant Bank Account any Payment.
- 4.2. PayU is entitled to recover the Fees and the sums set out at clause 4.3 by:
- 4.2.1. deduction from the next Payment due to the relevant Merchant;
  - 4.2.2. debit from the relevant Merchant Bank Account, in accordance with clause 5.4 below;
  - 4.2.3. invoice (in which case such sums will be payable by the Merchant in accordance with the terms of the invoice); and / or
  - 4.2.4. any combination of the above.
- 4.3 PayU is entitled to recover and withhold:
- 4.3.1 any Refunds;
  - 4.3.2 any Chargebacks and any Fines;
  - 4.3.3 any amounts required to cover any:
    - (a) potential or expected Refunds, Chargebacks, Chargeback Costs, Fines, taxes, levies, VAT, withholding taxes any liability or potential liability relating to a transaction or;
    - (b) liability or potential liability of the Merchant under this Agreement; and
  - 4.3.4. any other charges or amounts incurred by or due to PayU under or in connection with this Agreement.
- 4.4. If the value of the Fees and the sums set out in clause 4.3 exceed the aggregate value of a Payment due to the Merchant on any Payment Date, the remaining shortfall may be deducted (together with interest) on the following Payment Date. In addition, the relevant PayU Payment Provider reserves the right to require immediate payment of all or part of such shortfall at any time (together with interest).
- 4.5 Where, on any Payment Date, the amount of a Payment would fall below a minimum threshold (as notified by PayU to the relevant Merchant from time to time), if agreed to by the Merchant, PayU may defer such Payment to the following Payment Date. Payments to the Merchant shall be settled within T+1 unless otherwise stated in the Enrolment Form.

- 4.6 Pay is entitled to defer any Payment or any other sum due to the Merchant to the extent that PayU, in their absolute discretion, considers necessary or appropriate to protect their ability to recover the Fees and/or the sums set out at clause 4.3 or any other liability (actual or anticipated) of the Merchant in connection with this Agreement.
- 4.7 PayU may amend the Fees by providing 30 calendar days' prior written notice. Such change will become effective on the calendar day immediately following the end of this period.
- 4.8 If PayU has reasonable suspicion that a transaction may be fraudulent or involve other criminal activity, PayU may suspend the processing of that, and any connected, transaction, or withhold Payment until the satisfactory completion of any investigation.
- 4.9 The Merchant shall not be entitled to any interest or other compensation whatsoever in respect of suspension or delay in receiving Payment.

## 5. RIGHTS AND OBLIGATIONS OF THE MERCHANT

- 5.1. The Merchant shall comply with Applicable law and any relevant Payment Scheme Rules to which it is subject. The Merchant shall not act in contravention of or cause PayU to act in contravention of any Payment Scheme Rules to which PayU is subject.
- 5.2. The Merchant shall only accept payments and/or process Refunds:
- 5.2.1. from Customers in connection with goods and/or services supplied by the Merchant;
  - 5.2.2. in respect of goods and services which:
    - (a) commonly fall within its business as identified in its request to PayU for the Services; and
    - (b) the customer would reasonably expect to receive; and
  - 5.2.3. in respect of goods or services the provision of which is in accordance with Applicable Law.
- 5.3 The Merchant shall, at all relevant times, maintain a bank account in their own name, that is acceptable to PayU so the Merchant can receive Payments from, and make payments to, PayU ("**Merchant Bank Account**").
- 5.4 Where it has been agreed that PayU may debit a Merchant Bank Account, the Merchant shall:
- 5.4.1 maintain with their bank an instruction to authorise all such debits and/or provide PayU with any necessary mandate or authority; and
  - 5.4.2 put funds in the Merchant Bank Account as PayU may in good faith consider necessary.
- 5.5. While PayU may provide installation guides, the Merchant remains solely responsible for ensuring the correct implementation, installation, integration, security and operation of all systems, equipment, software and telecommunications and use of the Services on its own platform.
- 5.6. The Merchant shall provide immediate notice of (i) any unauthorised third party use of the Services; and/or (ii) any event which might lead to such unauthorised use.

- 5.7. The Merchant shall take all reasonable steps to assist PayU in handling any claim or query raised by any other third party in relation to the Services.
- 5.8. The Merchant shall immediately notify PayU of any act, omission or error which does or may adversely affect the Merchant's ability to perform their obligations under this Agreement or cause loss or damage to PayU (including but not limited to any material change in the nature or extent of the Merchant's business).
- 5.9. The Merchant acknowledges and agrees to abide by, and ensure that all equipment and software it uses in connection with the transactions and the storage and / or processing of Data complies with, any payment card industry or payment application data security standards of any relevant Payment Scheme as updated from time to time (the "**PCI DSS**"). The Merchant shall ensure that any of its agents, sub-contractors or any third parties used by it in relation to the transactions is aware of and shall comply with the terms of this clause. The Merchant shall, promptly on request of PayU or Payment Scheme, provide evidence of PCI DSS compliance.
- 5.10. The Merchant shall immediately notify PayU on becoming aware of any actual or suspected security breach relating to any Data. As soon as reasonably practicable, the Merchant shall identify and remediate the source of such security breach and take any additional steps required by PayU. This clause shall not prejudice any other remedies available to PayU under this Agreement.
- 5.11. The Merchant shall comply with any additional security, authentication, risk control or other requirements imposed by PayU or a Payment Scheme, including but not limited to where that Merchant is, in the opinion of PayU and / or the Payment Scheme, engaged in high risk activities.
- 5.12. The Merchant shall not engage in any practice prohibited by any of the Payment Scheme Rules unless permitted by Applicable Law. In particular:
  - 5.12.1. a Merchant must not engage in any practice that discriminates against or discourages the use of a card in favour of any other acceptance brand, including the levying of surcharges, or the imposition of minimum or maximum transaction amounts;
  - 5.12.2. a Merchant must not submit to PayU any transaction that represents the refinancing or transfer of an existing customer obligation that is deemed to be uncollectible; or arises from the dishonour of a customer's personal check.

## **6. CHARGEBACKS**

- 6.1 If applicable, the Merchant acknowledges and agrees that in certain circumstances, Card Issuers, Payment Schemes or other financial institutions may (i) refuse to settle a transaction or (ii) impose Chargebacks on PayU.
- 6.2 The Merchant agrees that it may be required to reimburse PayU for Chargebacks where the Merchant has accepted payment in respect of the relevant transaction (even if the Merchant are under no legal liability for the supply or performance of the goods or services concerned). Where applicable, the Merchant must respond to cardholder disputes and handle Chargebacks in accordance with Payment Scheme Rules.
- 6.3 All Chargebacks shall correspond to the whole or part of the settlement value of the original transaction or, if applicable, at the option of PayU, to an amount converted to the settlement currency from the currency of Chargeback by the Card Issuer, Payment Scheme or other financial institution to PayU at the rate of exchange quoted by PayU for settlement purposes on the day the Chargeback is processed.

- 6.4 Where a Chargeback occurs, PayU shall immediately be entitled to recover from the Merchant:
- 6.4.1 the full amount of the relevant Chargeback; and
  - 6.4.2 any other costs, expenses, liabilities or Fines incurred as a result of or in connection with such Chargeback ("**Chargeback Costs**").
- 6.5 A Chargeback represents an immediate liability from the Merchant to PayU.
- 6.6 PayU shall not be obliged to investigate the validity of any Chargeback by any Card Issuer, Payment Scheme or other financial institution, whose decision shall be final and binding in respect of any Chargeback.
- 6.7 As Chargebacks may arise a considerable period after the date of the relevant transaction, PayU shall remain entitled to recover Chargebacks and Chargeback Costs from the Merchant in respect of all Chargebacks, even after the termination of the contractual relationship between the Merchant and PayU.
- 6.8 PayU may immediately pass on and recover from the Merchant any Fines or further charges incurred as a result of or in connection with Chargeback Costs and/or terminate this Agreement and the Services provided hereunder if PayU in its sole opinion considers that the total value of Refunds and/or Chargebacks is unreasonable.
- 6.9 It is the Merchant's responsibility to prove to PayU's satisfaction (or that of the relevant Card Issuer or other financial institution) that the debit of a customer's account was authorised by such customer.
- 6.10 The Merchant agree to process returns of, and provide refunds and adjustments for, products sold and/or payment collected through its merchant site in accordance with this Agreement, the acquiring banks instructions and card association rules. The Merchant understands that all refunds must be routed through the same acquiring bank payment gateway through which the transaction was made. In the event that the Merchant initiates refunds through any other mode, the Merchant shall be fully liable for all Chargebacks raised in respect of the transaction refunded.
- 6.11 The Merchant agrees and confirms that it shall remain solely liable after the termination of the Agreement for all Chargebacks, refunds, penalties, loss, damages or cost incurred by PayU, acquiring banks, Payment Schemes and/or Customers and for all claims and proceedings arising against PayU and/or an acquiring bank with respect to the Agreement.

## 7. SET-OFF

- 7.1 PayU may, without notice, set off any debts or liabilities due from the Merchant or Merchants Affiliates to PayU or any of its Affiliates under this Agreement against any debts or liabilities owed by PayU or any of its Affiliates to the Merchant or Merchant Affiliates, regardless of the place of payment or currency of either obligation. If the obligations are in different currencies, then PayU may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- 7.2 The right applies whether or not the relevant debts or liabilities are matured and whether those debts or liabilities are present, future, actual, contingent, potential, liquidated and/or unliquidated. For these purposes, PayU may value future, contingent, potential and/or unliquidated items.

- 7.3 The exercise by PayU of any of its rights under this clause shall be without prejudice to any other rights or remedies (including but not limited to set-off) to which PayU or its Affiliates are otherwise entitled (by operation of law, contract, or otherwise).

## 8. FRAUD PREVENTION

- 8.1 PayU may offer or require the Merchant to accept certain fraud prevention services ("**Fraud Prevention Services**"). Where the Merchant receives any Fraud Prevention Services, it will comply with any additional terms governing those Fraud Prevention Services.
- 8.2 The Merchant acknowledges and agrees that the processing of transactions and/or the making of Payments may be delayed and/or suspended in connection where PayU or any PayU Affiliate has a reasonable suspicion that a transaction may be fraudulent or involve other criminal activity.
- 8.3 The Merchant must not submit, and PayU must not accept, any transaction that the Merchant and / or PayU either knows is, or should have known was, illegal. For the avoidance of doubt, for the purposes of this clause 8.3 the Merchant is deemed to be responsible for the conduct of its employees, agents and representatives.
- 8.4 The Merchant shall at all times provide PayU with reasonable assistance on request for the prevention and detection of fraud or other criminal activity in respect of transactions.

## 9. REPRESENTATIONS AND WARRANTIES

- 9.1 The Merchant represents and warrants to PayU as follows:
- 9.1.1. The Merchant is a company duly incorporated, organised and/or authorised and in good standing under the laws of the state, region or country of its organisation.
  - 9.1.2. The Merchant has full capacity, power and authority to abide by this Agreement and to exercise its rights and perform its obligations hereunder.
  - 9.1.3. All corporate action required to enter into this Agreement by the Merchant and the exercise by it of its rights and the performance by it of its obligations under this Agreement has been duly taken.
  - 9.1.4. This Agreement are valid, binding and enforceable against the Merchant in accordance with its terms and no provision of this Agreement is in conflict with any of the Merchant's obligations under its constitutional documents, Applicable Law or any other document, charter or agreement to which the Merchant is subject.
  - 9.1.5. The Merchant will use the Services in good faith, in accordance with the terms of this Agreement and in accordance with all Applicable Law, Payment Scheme Rules and Further Guidance. In particular, the Merchant will not use the Services in a manner that that could result in a violation of anti-money laundering, counter terrorist financing and similar legal and regulatory obligations.
  - 9.1.6. The Merchant shall comply with any technical specifications available on the PayU Websites, which PayU reserves the right to modify at any time.
  - 9.1.7 PayU is not part of, nor participate in sales and procurement contracts executed between the Merchant and its Customers. The Merchant shall comply with consumer obligations, data privacy obligations, tax obligations, exchange obligations or any other obligation establishes in mandatory Applicable Law. The Merchant is responsible for



acknowledging and meeting the legislation in force and applicable to its activity in the countries where it operates and uses the Services.

- 9.2 PayU represents to the Merchant that PayU has the power and authority to enter into this Agreement and to perform its obligations.

## 10. INFORMATION

- 10.1 The Merchant shall at all times immediately disclose to PayU such information as PayU may reasonably require for the provision of the Services, including (but not limited to) any information required to satisfy the reporting or other obligations (including financial obligations) of the Merchant under this Agreement, any Payment Scheme Rule and / or Applicable law.
- 10.2 The Merchant shall immediately notify PayU of any material change in such information, including any material change in the financial position of the Merchant for the duration of the provision of the Services.
- 10.3 PayU may retain such information as long as it may be required by Applicable Law or as per the contractual obligation with PayU whichever is greater.
- 10.4 Subject to Applicable Law, PayU may use information, collect information and share information with their Affiliates, Card Issuers, Payment Schemes, credit reference agencies, fraud prevention agencies and crime enforcement authorities to the extent PayU may reasonably consider necessary or appropriate for the provision of the Services and/or compliance with this Agreement, Applicable Law, Payment Scheme Rules and Further Guidance. Such information may be used by other credit providers to take decisions about the Merchant and their financial associates.
- 10.5 The Merchant acknowledges and agrees that:
- 10.5.1 Payment Schemes to which PayU discloses information may (i) maintain databases (which may be available to third parties including Card Issuers, regulators and other authorities) containing information regarding the conduct of transactions by merchants; and/or (ii) categorise undesirable conduct of merchants; and
- 10.5.2 If any of the Services or this Agreement are terminated pursuant to clause 17, relevant Payment Schemes may, subject to Applicable Law, be notified and may retain such information in accordance with their normal practice.
- 10.6 PayU shall have no liability to the Merchant for any inaccuracy in the information provided to any third parties pursuant to this clause 10, provided it acted in good faith.

## 11. DATA MANAGEMENT AND PROTECTION

- 11.1 The Merchant shall abide by Applicable Law, and its contractual and other obligations to its Customers, in providing Customer Data to PayU and processing Customer Data through the use of the Services.
- 11.2 PayU may not use or disclose Customer Data except as permitted by clause 11.3.
- 11.3 PayU may use and disclose Customer Data, in accordance with Applicable Law, for the following purposes: (a) providing, improving and developing the Services; (b) market research and trend analysis; (c) taking steps to prevent, detect or prosecute fraud and other offences

and/or to comply with Applicable Law; (d) sending marketing and other communications to Customers; (e) credit assessment of Customers; and (f) other purposes authorized by the Merchant in this Agreement or applicable Jurisdiction Specific Conditions or otherwise in writing. PayU may also take steps to derive anonymised Customer Data from identifiable Customer Data, and may use and disclose anonymised Customer Data, for any lawful purposes, in accordance with Applicable Law.

- 11.4 The Merchant shall provide such information and offer such choices to, and obtain such consents from, its Customers as are reasonably required to enable PayU to use and disclose the Customer Data as set out in clause 11.3 in accordance with Applicable Law. Where a required consent to (or failure to exercise an opt-out from) use of Customer Data for any of the purposes specified in clause 11.3 cannot be made a condition to processing a transaction under Applicable Law, the Merchant shall (i) nonetheless use reasonable endeavours to facilitate Customer choices allowing such use and disclosure; and (ii) promptly notify PayU in writing of any required consent which is withheld or subsequently withdrawn and any opt-out choice which is exercised.
- 11.5 The Merchant acknowledges that PayU may be required to contact Customers to provide information and seek consents as necessary to allow PayU to use and disclose Customer Data as set out in clause 11.3 in accordance with Applicable Law. The Merchant shall take such steps, consistent with Applicable Law, as PayU reasonably request in writing to facilitate these communications, including making available space in its web or mobile interfaces and/or providing Customer contact details.
- 11.6 If, in the course of providing the Services, PayU processes Customer Data which comprise personal data as a processor on behalf of the Merchant as controller:
- 11.6.1 PayU shall:
- (a) only process those Customer Data on the instructions of the Merchant; and
  - (b) have in place appropriate technical and organisational measures to protect those Customer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular (but not only) where the processing involves the transmission of data over a network, and against all other unlawful forms of processing; and
- 11.6.2 the Merchant instructs PayU to take such steps in the processing of those Customer Data as PayU considers necessary or desirable for the provision of the Services.
- 11.7 The Merchant shall abide by any payment card industry data security standards of the relevant Payment Schemes from time to time.

## **12. INTELLECTUAL PROPERTY**

- 12.1 All intellectual property rights relating to the Services are owned by and vest exclusively in PayU and its Affiliates. The information given by the Merchant to its clients concerning the Services does not create any intellectual property or other right on the part of the Merchant or the client over the Services or their functionalities, or, without limitation, over the trademarks, trade names, goodwill, domain names, websites, computer software (source or object code), data, logos, images, copyrighted materials, patents, inventions, know how, or any other information, owned by PayU, their Affiliates, and/or their suppliers or subcontractors.

- 12.2 The Merchant shall comply with any and all relevant Payment Scheme Rules relating to the trademarks, data, logos, images, copyrighted materials or any other protected intellectual property of such Payment Scheme ("**Marks**").
- 12.3 Any use of a Mark by the Merchant in advertising, acceptance decals, or signs, must be in accordance with any Payment Scheme Rules, including the Payment Scheme's reproduction, usage, and artwork standards, as may be in effect from time to time.
- 12.4 The Merchant use or display of any Mark will terminate effective with the termination of this Agreement or upon notification to the Merchant by the relevant Payment Scheme to discontinue such use or display.
- 12.5 Notwithstanding the above, the Merchant gives PayU and / or the Service Provider(s) the right to use its name or company name, and also to mention its business activity, in any promotions or advertising concerning the Services, regardless of the type of advertising or media used.

### **13. CONFIDENTIALITY**

- 13.1 During the term of this Agreement and for two years from the date that this Agreement are terminated, the Receiving Party may not use Confidential Information for a purpose other than the performance of its obligations under this Agreement. In particular, the Receiving Party may not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with the provisions of this clause 13.
- 13.2 During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its directors, other officers, employees, agents, Affiliates, delegates, sub-contractors and customers on a strict need-to-know basis to the extent that disclosure is necessary or desirable for the purposes of this Agreement. The Receiving Party shall ensure that any such recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if such recipient was a Party to this Agreement.
- 13.3 Clauses 13.1 and 13.2 do not apply to Confidential Information:
- 13.3.1 which is at the date of this Agreement, or at any time after that date becomes, publicly known other than by the Receiving Party's or other recipient's breach of this Agreement;
  - 13.3.2 which can be shown by the Receiving Party to the Disclosing Party's satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party. Or
  - 13.3.3 to the extent required by Applicable Law provided that in these circumstances the Receiving Party shall advise the Disclosing Party of same prior to such disclosure, in order for the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard.
- 13.4 If the Receiving Party receives a notice from a governmental authority or faces legal action to disclose Confidential Information received under this Agreement, then the Receiving Party shall promptly, if not prohibited by law/notice/governmental authority, notify the Disclosing Party of the same such that the Disclosing Party may have the opportunity to intercede, obtain protective order and contest such disclosure and, upon request, shall cooperate with the Disclosing Party in contesting such a disclosure. Further, the Parties agree that in event the Receiving Party is required to disclose the Confidential Information pursuant to the legal action, notice, order, it shall not disclose any Confidential Information in excess of the legal requirement and to any other person.

## 14. LIMITATION OF LIABILITY OF PAYU

- 14.1 All obligations on PayU arising out of or in connection with this Agreement are obligations to use reasonable efforts and not obligations to achieve a specific result.
- 14.2 Except as set out in this Agreement or prescribed by law, all conditions, warranties and representations, expressed or implied by (i) statute, (ii) common law or (iii) otherwise, in relation to the Services are excluded.
- 14.3 PayU is not liable to the Merchant under any circumstance, whether for negligence, breach of contract, misrepresentation or otherwise, for:
- 14.3.1 loss or damage which are incurred by the Merchant as a result of:
- (a) third party claims;
  - (b) viruses, malicious or disruptive codes, power cuts or service interruptions or other IT or hardware or software problems or faults;
  - (c) decisions by any relevant court, regulatory or other authority or the operation of Applicable Law; and/or
  - (d) loss of profit, goodwill, business opportunity or anticipated saving suffered by the Merchant;
- 14.3.2 indirect, consequential, punitive, exemplary or similar loss or damage (including damage to reputation) suffered by the Merchant; and/or
- 14.3.3 loss or damage which may be the consequence, wholly or partially, of a breach by the Merchant of this Agreement.
- 14.4 The entire liability of PayU under or in connection with this Agreement whether for negligence, breach of contract, misrepresentation or otherwise, is limited, in respect of each event or series of connected events, to the total Fees paid by the Merchant under this Agreement to PayU during the twelve (12) month period immediately preceding the event that gave rise to the claim.
- 14.5 Nothing in this Agreement shall operate to exclude or restrict the liability of PayU for death or personal injury or for any matter which such liability cannot be lawfully excluded or limited.
- 14.7 Notwithstanding any provision to the contrary, in relation to any obligations that PayU may have that arise, PayU shall not be liable in the event that abnormal and unforeseeable circumstances beyond their control prevent them from fulfilling their obligations under this Agreement.

## 15. INDEMNITY

- 15.1 The Merchant shall indemnify, and keep indemnified PayU and their Affiliates, officers, employees and agents (each an "**Indemnified Party**"), immediately on demand against each loss, liability or cost (including, without limitation, that incurred defending or settling a claim alleging such a liability) which they incur as a result of:
- 15.1.1. any breach of the terms of this Agreement, improper use of the Services, violation of Applicable Law or Payment Scheme Rules, conduct categorised as undesirable by any Payment Scheme, or violation of the rights of any third party, by the Merchant, any of their Affiliates or any person acting on their behalf; and/or

- 15.1.2 processing of Customer Data by an Indemnified Party as may reasonably be necessary to provide the Services.
- 15.2 Nothing in this clause 15 restricts or limits the general obligation at law for an Indemnified Party to take reasonable efforts to mitigate losses.

## 16. SECURITY/DEPOSIT

- 16.1 If applicable, PayU reserves the right to require that the Merchant provides (or procures the provision of) security in such form and over such assets as PayU shall require to secure the performance of the Merchant's actual, contingent or potential obligations under this Agreement or otherwise in connection with the Services. Such security may take the form of collateral (in the form of retained Payments or otherwise), a rolling reserve, a guarantee or indemnity. PayU reserves the right to unilaterally call for an increase to the level of security held.
- 16.2 PayU may require that any security provided be supplemented or replaced at any time.
- 16.3 At the time of termination, PayU may retain such amount from the security (if any) and Payment payable to the Merchant as may be determined by PayU to cover Chargeback risk, refund risk or any potential loss, damages, penalties, cost that may be incurred by PayU for a period of 180 Business Days. In the event that such retained amount is not sufficient to cover all outstanding amounts of the Merchant post termination, the Merchant shall ensure that it pays PayU all pending amounts within 10 (ten) Business Days of receiving the demand notice and shall at all times keep PayU indemnified in this respect.

## 17. INSPECTION

- 17.1 The Merchant shall permit the authorised representatives of PayU and/or the acquiring banks to carry out physical inspections of the place(s) of business or other facilities of the Merchant to verify if the Merchant is in compliance with its obligations hereunder.
- 17.2 If the Merchant refuses such inspection or provides inaccurate, untrue, or incomplete information, or fails to comply with the terms and conditions of this Agreement, PayU reserves the right to suspend or terminate the PayU Services with immediate effect.

## 18. TERM AND TERMINATION

- 18.1 Unless otherwise agreed this Agreement have an initial term of one year ("Initial Term") unless terminated or suspended as provided for in the Agreement. Unless either Party gives written notice to terminate the Agreement (not later than 60 days prior to the end of the Initial Term or any successive periods) this Agreement are automatically renewed for successive one year periods
- 18.2 A Party ("**Initiating Party**") may terminate this Agreement with immediate effect by written notice to the other Party ("**Breaching Party**") if any of the following events take place or is expected to take place:
  - 18.2.1 the Breaching Party is in material breach (whether or not a repudiatory breach) of an obligation under this Agreement and, if the breach is capable of remedy, the Breaching Party has failed to remedy that breach within 30 days after receipt of written notice of the breach;

- 18.2.2 the Breaching Party has passed a resolution for its winding up or a court of competent jurisdiction has made an order for the Breaching Party's winding up or dissolution;
  - 18.2.3 an administration order has been made in relation to the Breaching Party or a receiver, or an encumbrancer has been appointed to take possession of or sell, a assets of the Breaching Party;
  - 18.2.4 the Breaching Party has made an arrangement or composition with its creditors generally or has made an application to a court of competent jurisdiction for protection from its creditors generally; or
  - 18.2.5 any other procedure having similar effect to the above is initiated.
- 18.3 PayU may suspend or terminate this Agreement by written notice to the Merchant with immediate effect if PayU is of the opinion that any of the following events have taken place or are expected to take place:
- 18.3.1 the Merchant ceases to carry on business;
  - 18.3.2 the Merchant merges with any other person or in any other way changes the persons who have the ability to direct, guide or otherwise influence its affairs;
  - 18.3.3 PayU is unable to recover the Fees or other sums set out at clause 4.3 for any reason, or considers that the total value of Refunds and/or Chargebacks is unreasonable;
  - 18.3.4 PayU determines that continuing to provide the Services to the Merchant represents increased risk of loss or liability or risk to reputation to PayU or any of its Affiliates;
  - 18.3.5 the Merchant engages in any trading practices or other activity which might give rise to fraud or any other criminal activity or suspicion of fraud or any other criminal activity;
  - 18.3.6 security granted by the Merchant under this Agreement ceases to be sufficient, enforceable or available;
  - 18.3.7 any claim or action in connection with this Agreement or the Services hereunder is threatened or commenced by either Party;
  - 18.3.8 the Merchant breaches any Payment Scheme Rules;
  - 18.3.9 where any Payment Scheme Rule would otherwise be broken by either the Merchant or PayU; or
  - 18.3.10 PayU is required or requested to do so by any Payment Scheme or other financial institution or PayU is subject to Fines from any Payment Scheme, other financial institution or any other third party arising from the provision of the Services.
- 18.4 A Payment Scheme may limit, suspend or terminate this Agreement and the Services provided hereunder by notice to the Merchant with immediate effect if that Payment Scheme, in its absolute discretion, so decides.
- 18.5 Termination of this Agreement, does not affect a Party's accrued rights and obligations at the date of termination.

- 18.6 Clauses 4.2, 4.3, 5.1, 5.7, 5.9, 5.10, 5.11, 6, 7, 10.3, 10.4, 10.5, 10.6, 12, 13, 14, 15 and 16.3 shall survive termination of this Agreement.
- 18.7 Each Party's further rights and obligations shall cease immediately on termination except as otherwise specified in this Agreement, except that those clauses, the survival of which is necessary for the interpretation or enforcement of this Agreement, shall survive termination of this Agreement, and shall continue in full force and effect.
- 18.8 If a Service is terminated for any reason, the Merchant will pay all Fees payable up to the termination date.

## 19. TRANSFER AND ASSIGNMENT

- 19.1 The Merchant may not assign, transfer or purport to assign or transfer any of its rights or obligations under this Agreement without the prior written consent of PayU (such consent not to be unreasonably withheld or delayed). PayU may assign, transfer or purport to assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Merchant.

## 20. FORCE MAJEURE

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

## 21. NOTICES

- 21.1 Except for the service of proceedings, a notice under or in connection with this Agreement (a "**Notice**"):
- 21.1.1 shall be in writing; and
  - 21.1.2 may be delivered personally or sent by electronic mail or first class post, or pre paid recorded delivery, (and air mail if overseas) to the Party due to receive the Notice at its address set out in clause 25 or to another address specified by that Party by not less than seven days' written notice to the other Party.
- 21.2 Unless there is evidence that it was received earlier or later a Notice is deemed given:

- 21.2.1 if sent by electronic mail, the next Business Day assuming that no notification of failure to deliver the electronic mail was received by the sending party;
- 21.2.2 if sent by post, except air mail, two Business Days after posting it; and
- 21.2.3 if sent by air mail, six Business Days after posting it.

## **22. MISCELLANEOUS**

- 22.1 PayU may revise the provisions in this Agreement or introduce additional Agreement at any time and from time to time. PayU shall notify the Merchant of any revision or addition to the Agreement in accordance with clause 21 at least 30 calendar days before the date such revision or addition is to become effective. Each such amendment shall be binding on the Merchant from the effective date of that amendment.
- 22.2 If any provision in this Agreement becomes illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- 22.3 Should PayU fail or delay in exercising any right or remedy under this Agreement, such failure or delay shall not constitute a waiver of that right or remedy. A waiver is only effective if made in writing in accordance with clause 20 of this Agreement. A waiver is only effective in respect of the particular circumstances for which it is given.

## **23. RELATIONSHIP BETWEEN THE PARTIES**

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

## **24. GOVERNING LAW AND ENFORCEMENT**

- 24.1 This Agreement and any non-contractual obligations arising out of or in connection with it are governed by laws of the Federal Republic of Nigeria.
- 24.2 Any disputes between the parties arising from or related to this Agreement shall be settled by arbitration in accordance with Arbitration and Conciliation Act Cap A18 LFN 2004. The arbitration venue shall be Lagos and the language shall be English