

# MERCHANTS FACILITY SERVICES

## Terms & Conditions



# Contents

1. INTRODUCTION .....	3
2. INTERPRETATION & DEFINITION .....	3
3. CONDITION .....	7
4. EFTPoS SERVICE - TERMINALS AND OTHER EQUIPMENT .....	8
5. CUSTOMER CREDITWORTHINESS .....	9
6. PROCESSING TRANSACTIONS .....	10
7. SALES REFUND TRANSACTIONS .....	11
8. INVALID TRANSACTION .....	11
9. AUTHORISATION AND FLOOR LIMITS .....	12
10. SETTLEMENT AND PAYMENT OF TRANSACTIONS .....	12
11. YOUR RECORDS .....	13
12. YOUR ACCOUNT .....	13
13. RESERVATION GUARANTEE .....	14
14. E-COMMERCE MERCHANTS AND MAIL ORDER / TELEPHONE ORDER (MOTO) .....	14
15. MOBILE MERCHANT SERVICES .....	16
16. QUASI-CASH TRANSACTIONS .....	17
17. TRUSTEES .....	17
18. BSP AGENT BANKING .....	18
19. RECORDS .....	19
20. VARIATIONS .....	19
21. NOTICES .....	20
22. WARRANTIES AND INDEMNITIES .....	20
23. CODE OF BANKING PRACTICE .....	21
24. FINANCIAL CRIMES MONITORING AND ANTI- MONEY LAUNDERING .....	21
25. ASSIGNMENT .....	22
26. TERMINATION .....	22
27. INTELLECTUAL PROPERTY AND USE OF BSP TRADEMARKS .....	23
28. CONFIDENTIALITY .....	24
29. ACCESS TO PREMISES .....	24
30. CHANGE OF ADDRESS .....	24
31. MEDIA AND ADVERTISING .....	24
32. MARKETING .....	25
33. ONLINE GAMBLING .....	25
34. DEFAULT AND ENFORCEMENT EXPENSES .....	25
35. SURVIVAL OF INDEMNITIES AND DISCLAIMERS OF LIABILITY .....	25
36. GOVERNING RULES, LAWS AND REGULATIONS .....	25
37. THIRD PARTIES USED BY YOU .....	25
38. YOUR INFORMATION .....	25
39. OUR CONSENT UNDER THESE TERMS AND CONDITIONS .....	26
40. SEVERABILITY .....	26
41. DISCLAIMER .....	26
<b>Contact Details .....</b>	<b>27</b>

## 1. INTRODUCTION

### 1.1 Welcome

Thank you for selecting BSP for your electronic banking requirements. We encourage you to take the time to read these Terms and Conditions as they set out your rights and obligations in respect of the various types of Merchant Facility Services provided by us. Should you have questions relating to this document or any of the other documents that form part of your Merchant Agreement, please contact BSP on the address provided at the end of this document.

### 1.2 Merchant Agreement (Agreement)

We have agreed to provide you with a BSP Merchant Facility Service under a Merchant Agreement comprising the Letter of Offer signed by you and these Terms and Conditions. The Merchant Agreement pack is comprised of:

- a) the Letter of Offer;
- b) these Merchant Facility Services Terms and Conditions;
- c) the Merchant User Guide (EFTPoS Terminal only); and
- d) the Merchant PCI Guidelines (MOTO Merchants only).

If there is any inconsistency between the provisions of the Merchant Facility Services Terms and Conditions and any other documents forming part of the Merchant Agreement, then the Merchant Facility Services Terms and Condition applies over all other documents.

### 1.3 The Merchant Facility Services

- a) The Merchant Facility Services comprise the following facilities:
  - i. EFTPoS Service:
    - through the use of an EFTPoS Terminal by commencing to process transactions;
    - by taking delivery, either of any equipment enabling the processing of transactions under the service, or of any materials to be used by you during the custody of the service.
  - ii. Electronic Commerce Service (E-Commerce):
    - by commencing to process transactions through the service;
    - by promoting and/or preparing a website where you will display your business goods or services for the purpose of obtaining payment by Online Transactions.
  - iii. BSP Agent Banking Service:
    - through the use of an EFTPoS Terminal by commencing to process transactions and taking deposits and withdrawals; or
    - by taking delivery, either of any equipment enabling the processing of transactions under the service, or of any materials to be used by you during the custody of the service.
  - iv. Mobile Merchant Services:
    - through the use of Mobile Banking service when receiving payments from Mobile Banking Customers; or
    - by being setup on the Mobile Banking platform to receive direct payments from Customers.

## 2. INTERPRETATION & DEFINITION

### 2.1 Interpretation

In this Agreement:

- i. 'Person' includes a firm, body corporate, unincorporated association or authority and the successors and assigns thereof;
- ii. words that are singular include the plural and vice versa;
- iii. a reference to an agreement or another instrument includes any supplement, variation, novation or replacement of any of them;
- iv. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- v. where two or more parties comprise you;
  - a reference to that entity includes each and any two or more of them; and
  - the obligations on the part of that entity bind them jointly and severally;
- vi. a reference to a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- vii. an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;

## 2.2 Definition

The following words have the meanings described below unless the contrary intention appears;

**"Account"** means the account that you hold with BSP, and nominated by you for acceptance of credit and debit entries under this Agreement and for related purposes;

**"Accredited Gateway Provider/Data Processor"** means a gateway provider/data processor who has formal recognition of compliance with security standards and technical requirements from BSP, and has been recommended by us;

**"Agreement"** means the Merchant Agreement comprising the Letter of Offer and these Terms and Conditions;

**"Amex"** means American Express;

**"Authorisation"** means an authorisation message you receive from a Card Issuer when you process a Transaction through a Terminal or ask for an Authorisation;

**"Banking Day"** means a day when the country in which BSP operates and is open for general banking nationwide;

**"BSP Agent"** means a third-party representative appointed by BSP to facilitate transactions and duties listed in clause 18 on behalf of BSP;

**"BSP Agent Banking Service"** means a Merchant Facility Service made available to you which enables you to perform functions listed in clause 18;

**"BSP ID"** means a unique customer number that references the customer information;

**"Card"** means:

- a) a valid financial transaction debit or credit card issued by a member or affiliate of Mastercard® on which the Mastercard marks appear;
- b) a valid financial transaction debit or credit card issued by a member or affiliate of Visa® on which the Visa marks appear;
- c) a valid financial transaction debit or credit card issued by a member or affiliate of UnionPay International (UPI) on which UPI mark appears;
- d) a valid financial transaction debit or credit card issued by a member or affiliate of Japanese Credit Bureau (JCB) on which the JCB marks appear;
- e) a valid financial transaction debit or credit card issued by a member or affiliate of American Express (Amex) on which the Amex marks appear;
- f) a valid financial transaction card capable of acceptance under EFTPOS issued by a local bank or financial institution;
- g) any other valid financial transaction card that is issued under any loyalty program; or
- h) any other financial transaction card provided by BSP under this Agreement .

**"Card Issuer"** means the bank that issues the card in use;

**"Card Scheme"** means the Mastercard International Incorporated, Visa International Services Association, American Express, UnionPay International and Japanese Credit Bureau card schemes, or any other card scheme provider that BSP is a member of or participates in;

**"Cardholder"** means a person to whom a Card has been issued;

**"Cash Transactions"** means transactions via the Agent Banking which involves you dealing with cash, whether it is given to, or received from, the Customer;

**"Chargeback"** means a debit entry to your Account processed by us, and is the reversal of a credit previously made to your Account, in circumstances described in clause 8.3; this amount also includes any fees and commissions that were previously credited to your account;

**"Code of Banking Practices"** means a voluntary code of conduct setting the banking industry's commitment and obligation to customers on standard practices, disclosure and principles of conduct for their banking services. This code applies to equivalent codes or laws that are in place or may be introduced or revised from time to time.

**"Confidential Information"** means all information of either BSP or you disclosed or communicated by one of us to the other (Recipient), or learnt or accessed by the Recipient, as a result of, or for or in connection with the transaction carried out using Merchant Facility Services. A list of confidential information is outlined in clause 28. This definition applies even where the ultimate destination of a card transaction may be a deposit account;

**“Customer”** means any individual to whom a Card has been issued or purchases goods and/or services sold/provided by the Merchant using our Merchant Facility Services;

**“Data Breach”** means any event whereby your business, or any service provider facilitating the transmission, storage or acceptance of your Card payments, suspects or has knowledge of unauthorised access to confidential card payment details;

**“Default”** means failure by a Party to perform a material provision of this Agreement;

**“Default Notice”** means a notice given by one Party to the other Party for breach of the material provision of the Agreement;

**“EFTPoS”** means the Electronic Funds Transfer at Point of Sale system;

**“Electronic”** means the use of Merchant Facility Services in enabling BSP’s banking transactions;

**“Electronic Commerce (E-Commerce)”** means a merchant service provided by an e-Commerce application service provider that authorises BSP ID payments, Card or direct payments processing for online retailers;

**“E-Commerce Service”** means any method and/or device utilized by you, or by any service provider/s on your behalf, and used to engage in the acceptance, transmission or storage of card payment details. This definition includes but is not limited to all software, hardware, databases, digital image and physical records used and/or maintained by the BSP merchant and/or the BSP merchant’s service provider(s);

**“E-Commerce Merchant”** means a merchant who conducts the sale of goods or services electronically over the Internet, and who has been authorised by us to accept payments over the Internet using an approved payment gateway;

**“Electronic Record”** means any record established, communicated, received or stored in electronic, magnetic, optical or other devices in an information system to be transmitted from one information system to another;

**“EMV”** (or Europay/Mastercard/Visa) means the global industry standard for chip enabled cards aimed to protect Merchant and Customers from fraudulent activity and counterfeit cards;

**“EMV Cards”** mean chip enabled cards which complies with EMV;

**“Fees”** means the fees and charges set out in the Letter of Offer and any other fees or charges that may be imposed by us under these Terms and Conditions from time to time and in the manner specified by us;

**“Floor Limit”** means the amount of money above which card transactions must be authorised;

**“Holding Account”** means the Account;

**“Invalid Transactions”** means a transaction that is listed as an “Invalid Transaction” in clause 8 of these Terms and Conditions;

**“JCB”** means Japan Credit Bureau;

**“Letter of Offer”** means the Letter of Offer entered into between you and BSP for the provision of the Merchant Facility Services and which forms part of the Merchant Agreement;

**“Mail Order or Telephone Order Transaction (MOTO)”** means a Transaction you process using the card details without the physical presence of the Card at the time the Transaction is made;

**“Mastercard”** means Mastercard Incorporated;

**“Merchant”** means you; being the person with whom BSP has entered into the Merchant Agreement including administrators, successors and assignees and where more than one person, “merchant” means each person separately and two or more persons jointly;

**“Merchant Agreement”** means the agreement described in clause 1.2;

**“Merchant Facility Terms and Conditions”** means this document entitled “Merchant Facility Terms and Conditions”;

**“Merchant User Guide”** means the manual we provide for operating your Service;

**“Merchant Facility Services”** means the services listed clause 1.3;

**“Merchant PCI Guidelines”** means the document containing PCI guidelines and merchant obligations provided by BSP to Merchants using MOTO service for reading and execution;

**“Mobile Banking”** or **“BSP Mobile Banking Service”** means BSP Mobile banking service which offers USSD functionality to perform menu-driven banking, Transfer and Payment transactions;

**“Mobile Merchant Payments”** means payments made to a mobile merchant using BSP Mobile Banking USSD Payments Function;

**“MOTO Merchants”** means Merchant who have been authorised by BSP and whose EFTPoS terminals enabled to process MOTO transactions;

**“Multi-Currency Acquiring (MCA) Facility”** means one of the Merchant Facility Services which we have approved to acquire card transactions in other currencies including the local currency of the country in which your business operates;

**“Notice”** means a notice, request, consent or other communication related to this Agreement that we give you;

**“Online Transaction”** means a transaction between you and a Customer where the Customer sends their payment card data or BSP ID to you over the Internet, regardless of how the data is transmitted from you to us;

**“Party”** means BSP or the Merchant and Parties means both of them;

**“Payment Instruction”** means any instruction from a Customer to make payment from Merchant to BSP;

**“PCIDSS”** means Payment Card Industry Data Security Standards. This refers to the data security standards mandated by Visa and Mastercard to facilitate protection of Customer payment data from unauthorised access, which is applicable to any merchant who stores or transmits card data regardless of that storage or transmittal device;

**“PCIDSS Training”** means the training conducted by BSP for Merchants using MOTO service as referenced in clause 22.7. The training outlines the Merchant’s responsibility in facilitating protection for customer payment data from unauthorised access and their acceptance to be compliant to the Merchant PCI Guidelines BSP provides;

**“Premises”** means the place of business at which the Service is located;

**“Quasi-Cash Merchant”** is a merchant who carries out a Quasi-Cash Transaction;

**“Quasi-Cash Transaction”** means a transaction between you and a Customer where you sell items that are directly convertible to cash. Examples include (but are not limited to) money orders, traveler’s cheques, precious metals and foreign currency;

**“Recurring Transaction”** means when you make regular drawings on a Customer’s card with the Customer’s written authority;

**“Rules”** means the card scheme rules set by Mastercard, Visa, UPI, Amex and JCB and any other card scheme provider that BSP is a member of or participates in from time to time;

**“Secure Socket Layer (SSL)”** means the encryption technology used on a server that encrypts important data such as Card numbers and other information when it is being stored or passed from one computer to another over the internet;

**“Service”** means the Merchant Facility Services;

**“Service Guides”** includes the Merchant User Guide and any other practical operating instructions we provide;

**“Service Provider”** means the provider of any software or hardware that the merchant utilizes to assist with the acceptance of card payment details;

**“Shopping Cart Vendor System”** means the data processing system comprising the hardware, software and telecommunication network utilized by shopping cart vendor to provide services including any third party systems connected to a shopping cart vendor’s hardware, software and telecommunications network;

**“Software”** includes the operating system, application software and the terminal management software, and any updates issued from time to time;

**“Successful Transaction”** means any Transaction successfully effected by Customer in which Customer shall receive notification (printed receipt, email and/or SMS) as evidence of successful transaction;

**"Tax"** means any levy or tax of any kind (including, without limitation, any goods or services tax, value added tax or withholding tax) chargeable under the tax laws applicable in the jurisdiction of the country you operate;

**"Term"** means the term of the Agreement commencing on the date of execution of the Letter of Offer by you and terminating in accordance with these Terms and Conditions;

**"Terminal"** means the EFTPoS hardware, its peripherals, the user and Service Guides provided by us and/or the Terminal supplier and the software that is installed on that EFTPoS hardware, and includes any replacement hardware;

**"Terminal Rental Fee"** means a fee levied by BSP for the provision of a Terminal as specified in the Letter of Offer;

**"Terms and Conditions"** means the terms and conditions for the Merchant Facility Services set out in this document as amended from time to time;

**"Threshold Holding Amount"** in relation to BSP Agent Banking Service, means the amount a BSP Agent Banking merchant must hold in their Account in order to carry out any Cash Transactions for the Customer;

**"Transaction"** means a debit or credit transaction, refund transaction and/or a cash transaction where a Card, Card information or BSP ID is offered for payment and is processed using a Terminal, e-Commerce application or the Mobile Banking platform;

**"Transaction Fee"** means a fee for any Successful Transaction by Customer, payable by Merchant to BSP at the rate as listed in the Merchant Agreement;

**"UPI"** means UnionPay International;

**"Visa"** means Visa Inc;

**"We", "Us" and "BSP"** means BSP Financial Group Limited, and includes its successors or assignees. The liability of its members is limited. BSP branch locations in Fiji, Cook Islands and Solomon Islands. BSP is represented in Papua New Guinea, Fiji and Solomon Islands by BSP Financial Group Limited, in Samoa by Bank South Pacific (Samoa) Limited, in Tonga by Bank of South Pacific Tonga Limited, and in Vanuatu by Bank South Pacific (Vanuatu) Limited;

**"Web Hosting Provider"** means the provider of any software or hardware that you enter into an agreement with in order to enable you to promote a business via the internet;

**"You"** means the Merchant who has signed the Letter of Offer. If there is more than one, it includes any one or more of you. Where there is more than one of you, each of you is individually liable under the Agreement. This liability will continue, as regards the others, even where one or more of you is not liable or is no longer liable;

**"Your country"** means the country in which you operate your business and the Merchant Facility Services;

**"Your jurisdiction"** means the jurisdiction applicable in your country;

### 3. CONDITION

#### 3.1 Conditions You Agree to:

You agree as follows:

- a) to accept all valid Cards without discrimination and process Transactions according to your Merchant Agreement;
- b) to be bound by the Merchant Agreement;
- c) to comply with all relevant laws, rules and regulations relating to the acceptance of Transactions for processing;
- d) to only process a Transaction for payment of goods or services by Mail Order or Telephone Order Transaction or Online Transaction via the internet if you have prior written approval from us;
- e) to act in our interests in providing and promoting our Merchant Facility Service and processes so Customers can effect Transactions with you;
- f) to authorise us to obtain a copy of your credit reference at any time during the Term of this Agreement as permitted by law;
- g) to make sure all information you give us is true and correct;
- h) to make sure all Transactions are completed in accordance with these Terms and Conditions and the Merchant User Guide;
- i) not to apply Fees to any Card Transaction;
- j) to follow all the procedures we give you for making a sale or refund;
- k) not to sell, purchase, provide or exchange any Customer data to any other person other than us, the agents you use in your business for an approved purpose, the Card Issuer and as required by law;

- l) to take reasonable steps to ensure that Customer data is protected from misuse and loss and from unauthorised access, modification or disclosure by ensuring;
  - i) that all Customer data held electronically will be stored in an encrypted form in accordance with our instructions;
  - ii) that all Customer data which is accessible from the internet to reside behind a firewall;
  - iii) that only authorised personnel within your organization and the agents you use in your business for an approved purpose will have access to Customer data;
- m) not to connect us or any Cards Scheme in any binding way with the sale or endorsement of goods and services;
- n) immediately contact us to withdraw the application if you do not wish to accept our offer of Merchant Facility Services within 14 business days after the date of the receiving our offer;
- o) not substantially change your line of business, or type of goods or services that your supply to your customers or clients without first notifying us and receiving our written consent otherwise your Service will be terminated by us;
- p) accept that our approval of a subsequent application from you for another type of Service in connection with the subject business, these Terms and Conditions will also apply as soon as you accept our offer of the new Service.

### **3.2 Conditions We Agree to**

We agree we will process all valid Transactions you accept under this Agreement.

## **4. EFTPoS SERVICE - TERMINALS AND OTHER EQUIPMENT**

### **4.1 Equipment Supply**

We will supply you with a Terminal. The fees cost and charges payable for equipment are set out in the Letter of Offer or will be otherwise charged for under the Merchant Agreement.

### **4.2 Using a Terminal**

- a) You must use our Terminals according to the instructions provided in the Merchant User Guide and Service Guides;
- b) You must ensure that any other person who operates a Terminal (whether or not you authorise them to do so) acts in accordance with these Terms and Conditions.
- c) You will be liable for any act or omission of any other person who operates a Terminal whether or not you authorise them to do so.

### **4.3 Installing a Terminal**

- a) You will permit us to enter your premises upon the provision of a valid BSP identification to install, maintain, repair, replace or remove the Terminals pre-installed with SIM cards, during business hours or at any other reasonable time. You will observe the conditions of any agreement between us and you in relation to the Terminals.
- b) A Customer should be able to enter the Personal Identification Number (PIN) in the Terminal in a way so the number cannot be seen, identified or recorded by other people. PIN entry by a Customer should not be photographed by security cameras or reflected by mirrors or other devices.
- c) For each terminal, we will supply you with other equipment and material as follows:
  - i. all Service Guides in relation to merchant transactions, and in particular the Merchant User Guide; and
  - ii. Card decals and promotional material on agreed terms and conditions from time to time;
- d) All equipment and material which we provide to you remain our property. You shall display prominently at each of your premises all signs, advertising and promotional material we supply to you. If you accept payment through your Internet site, you shall, wherever you present payment options, display images of Card decals that we supply to you. You shall not use any advertising or promotional material in relation to the Cards, except those authorised by us.

### **4.4 Moving a Terminal**

You cannot move one of our Terminals unless you tell us in writing and we agree. You agree to pay all the costs incurred in moving a Terminal.

### **4.5 Care**

- a) Under normal conditions, we maintain our Terminals at our expense. Only our employees, contractors or agents can service or repair our Terminals.
- b) You must act in accordance with our directions for the care and protection of our Terminals. If the Terminal needs repair or replacing because you misused or neglected it, you must pay the cost for repairs and replacement.
- c) If a Terminal malfunctions, or for any reason is not able to process transactions we will not be responsible for any effect this may have on your business activities. You must not carry out a transaction using a malfunctioning Terminal. It is your responsibility to ensure that other means are available at short notice to enable you to continue to process transactions. These might include the installation of a spare Terminal, or identifying to your customers the location of the automatic teller machine nearest to your place of business.

#### **4.6 Breakdowns**

You must tell us immediately if a Terminal is faulty so we can repair the Terminal as soon as possible.

#### **4.7 Access**

You must let our employees, contractors or agents enter your premises during normal business hours to inspect, maintain, replace or remove our Terminal, decals, stationery and any other BSP property you have in your possession or control upon the provision of a valid BSP identification card.

#### **4.8 Ownership**

Terminals remain the property of BSP. You are responsible for any loss or damage to a Terminal that is caused by fire, theft, explosion, or other act in or around your premises. If a Terminal is lost or damaged we will decide a reasonable cost of repair or replacement and you must pay for repairs or replacement as a pass-through cost.

#### **4.9 Training**

We will give you a Merchant User Guide and Service Guides and provide initial training during the installation of the Terminal, at our cost. You are responsible for training people you authorise to operate the Terminal.

#### **4.10 Insurance**

You must have insurance, which covers our Terminal(s) for its maximum insurable value. The insurance is to cover the loss or damage to a Terminal caused by the events referred to in clause 4.11.

#### **4.11 Security**

- a) You must:
  - i. Ensure that each Terminal is protected against loss, theft, unauthorised access or use, modification or other misuse. This includes, without limitation, ensuring that at the start and close of each day each Terminal is secure and has not been lost or stolen.
  - ii. Notify BSP in writing as soon as you become aware (or should reasonably have become aware) that a terminal has been lost, stolen or may have been altered, tampered with or compromised.
- b) Any breach of this condition by you may result in you being liable for any loss suffered by BSP as a result of theft or loss of, or other breach of security in connection with a Terminal. This includes, without limitation, any loss arising from any unauthorised or fraudulent use of a Terminal that occurs before you give notice to us in accordance with clause 4.11 (a).

#### **4.12 Costs, Fees and Payments**

We will debit to your Account the applicable Terminal Rental Fees referred to in the Letter of Offer which you are required to pay in respect of the supply to you of EFTPoS Service, as from time to time varied in accordance with the arrangements between you and us. You agree to pay and you agree that we can withdraw or debit without notice from your Account or any other account you have with us all the:

- a) agreed costs referred to in the Letter of Offer;
- b) outstanding amounts related to refund Transactions;
- c) credits we make in error;
- d) invalid credits we paid;
- e) stamp duty, debits taxes, other duty, taxes and other Government charges that apply;
- f) amounts an audit has shown are due;
- g) other amounts you owe us;
- h) chargeback amounts;
- i) all fees, charges and costs incurred by us for recovery of outstanding debts owed by you to us;
- j) amounts of any Invalid Transactions; and
- k) any other amount we are unable to collect from the Card Issuer.

We may vary existing fees or introduce new fees relating to this agreement at any time either in writing to you or by advertising in the national media.

### **5. CUSTOMER CREDITWORTHINESS**

Just because a Customer has been issued with a Card or has had a Transaction processed or Authorisation given in respect of a Transaction, it does not guarantee or confirm:

- a) the validity of the Transaction;
- b) the identity of the Customer;
- c) the Customer is creditworthy;
- d) that you have followed these Terms and Conditions; or
- e) that the Transaction will not be charged back.

You cannot make a claim against us that we have guaranteed or confirmed any of these matters.

## 6. PROCESSING TRANSACTIONS

### 6.1 Your obligations

You must:

- a) only use authorised Terminals issued by BSP for Transactions under this Agreement;
- b) only process Mail Order or Telephone Order Transactions (MOTO) and Online Transactions if we have expressly agreed to this in the Agreement;
- c) insert any EMV Cards into the chip reader or tap on the terminal when they are presented for payment;
- d) prominently display or make accessible to the customer upon request, a fair policy, which deals with:
  - i. refunds and disputes;
  - ii. disputes associated with Mail Order/Telephone Order and Online Transactions. Your refund policy should be displayed on your website where applicable; and
- e) process all Transactions immediately through the Terminal;
- f) in situations where a Transaction does not cover the full cost of the sale, you can process a Transaction to pay some of the sale and get the balance in cash;
- g) supply cash to the Customer as part of a sale Transaction using the cash-out function of the Terminal if requested by the Customer.
- h) not use the cash-out function of the Terminal to split payments such that the cash-out amount is more than the sale amount.
- i) process all Transactions in the currency of the country which is shown in the Letter of Offer unless we authorise you in writing to do otherwise;
- j) give the Customer a copy of the receipt immediately after completing the Transaction, unless we agree otherwise in advance;
- k) accept all valid Cards and process all transactions in accordance with the Service Guides;
- l) process all transactions in the local currency of the country in which your business operates except where you have been approved for a Multi-Currency Acquiring (MCA) facility;
- m) understand that an authorisation only confirms that the Customer has sufficient funds available to cover the purchase, and that the Card has not been reported lost or stolen. It does not protect you from subsequent chargebacks which may be effected by us in circumstances described in clause 8.3;
- n) as a BSP Agent, ensure that you have sufficient funds in your Account to meet the Threshold Holding Amount to carry out Cash Transactions;
- o) provide notice to the Customer that you are responsible for the transaction, including the goods or services acquired by use of the Card, as well as for related customer service, dispute resolution and performance of the terms and conditions of the transaction;
- p) not, either directly or indirectly, process any transaction which was not originated as a result of a transaction between you and a Customer to whom you have actually supplied the goods and/or services for which the Card was used in payment.
- q) not undertake any transaction:
  - i. representing refinancing or transfer of an existing Customer's financial obligation to you (whether or not you consider that the obligation is not collectable); or
  - ii. as an alternate way of accepting payment due to the dishonor of a Customer's personal cheque.
- r) not, under any circumstances request or allow any Customer to disclose their personal identification number (PIN), password or other code or information that can be used to access a customer's account, for you to retain. You should only retain the customer's Card if our operator asks you to do so.

You may only store the following information:

  - i. Customer number in an encrypted format;
  - ii. Customer name;
  - iii. card expiry date;
  - iv. extended service code (used for Smart Card processing).
- s) under no circumstances, store the Card Verification Value (CVV) number.
- t) under no circumstances, request that a customer provide Card details via email for payment of the provision of goods and/or services. Should such details be provided to you, you must not use this information to provide goods and/or services and must immediately securely destroy these details.
- u) ensure that your business, and any service provider who participates in the storage of card payment details in any format on behalf of your business, or has access to Card details, or has systems which enable internet access by the public, fully complies with the PCIDSS. BSP will advise you on the level of security required which is based on the volume of transactions you process.
- v) not process transactions through the Service that relate to, or are in connection with, the sale of goods or services that are in contravention of the laws of your jurisdiction or the laws of the Customer's jurisdiction.
- w) carry out all lawful instructions and directions in relation to the operation of BSP Agent Banking issued by BSP from time to time. You must comply with any Service Guides specified by BSP from time to time.
- x) not process transactions through an E-Commerce Merchant domain that hasn't received approval by us. Failure to get approval will result in your E-Commerce Service being immediately terminated.

- 6.2** You are liable for any Transaction if we are not satisfied that it has been processed in accordance with the Agreement.

## **7. SALES REFUND TRANSACTIONS**

**7.1** Subject to clauses 7.2 to 7.5, you may process sales refund transactions by transferring the amount of the refund from your Account to a Customer's account. You shall not process any refund to a Customer's account unless the original transaction between you and that Customer was paid for by the Customer using the relevant Card.

**7.2** In order to utilize the terminal sales refund function:

- a) you must initiate a password; or
- b) specific to MOTO service, we will provide you with a password which you must change immediately on receipt. You may not process a sales refund transaction using a terminal unless you enter the password prior to each transaction.

**7.3** Where we have issued you with a password, we shall not be responsible for any unauthorised sales refund transactions processed through your terminal using the password we have issued.

**7.4** You shall control and be responsible for access to the terminal sales refund password. You should change your password if for any reason you think it has become known to persons other than those who you have authorised to complete refund transactions.

**7.5** We shall not be responsible for any unauthorised sales refund transactions processed through your terminal, even if those transactions may cause your Account to be debited by the amount of the transactions.

**7.6** For mail, telephone and Internet order and standing authority transactions, you will establish a fair policy for the handling of orders disputed by Customers and for the handling of disputed amounts of standing authority transactions. You will also establish a fair policy for refunds for each return of merchandise or for each order not authorised by the Customer.

## **8. INVALID TRANSACTION**

**8.1** A transaction is invalid if:

- a) the transaction is split into two or more transactions on the same Card or over two or more cards to avoid having to obtain an authorisation for the total amount of the sale (each transaction will be invalid);
- b) the Card relating to the transaction is not current at the time of the transaction; or
- c) you do not observe this Agreement in relation to the transaction;

**8.2** A telephone, Internet or mail order transaction (MOTO) is also invalid if the transaction is not authorised by the Customer, or in the case of a standing authority, the authority has expired or was cancelled prior to the transaction. You acknowledge that authorisation obtained provide no guarantee that the person providing the Card details is the Customer.

**8.3** We may refuse to accept, or may chargeback, any transaction if:

- a) the transaction is invalid;
- b) the Customer claims the transaction is invalid or disputes liability for any reason;
- c) you process a cancelled recurring Transaction;
- d) the Customer asserts a claim for set-off or a counterclaim. Chargebacks may be processed to your Account up to 12 months after the date of the original transaction;
- e) there are insufficient funds in your Account to meet the Threshold Holding Amount;
- f) the Transaction is not authorised by the Customer or authorised Card user (including Mail Order, Telephone Order (MOTO) or Online Transactions);
- g) the Card is used without the Customer's authority (including Mail Order, Telephone Order (MOTO) or Online Transactions);
- h) the Card is used before or after the validity dates shown on the Card;
- i) details on the Customer's copy of the receipt do not match those on other copies;
- j) you give the Customer cash in a Card Transaction;
- k) you charged more than your normal price for goods or services;
- l) the Transaction is to collect or refinance an existing debt using a Card (including dishonored cheques) or payment for previous Card charges;
- m) you did not supply or do not intend to supply the goods, services or cash listed;
- n) a refund Transaction does not relate to an original sale;
- o) you processed a Transaction knowing or in circumstances where you should have known that the Card is being used without the authority of the Customer;
- p) you were notified by us not to accept the Card being used in the Transaction(s);
- q) Transaction is processed on behalf of another Merchant or person;

- r) the currency of the country shown in the Merchant Agreement is not used;
- s) The goods or services are not supplied from within the country shown in the Merchant Agreement (unless we have consented to supply from an international location);
- t) this Agreement was not valid on the date of the Transaction;
- u) the Card was not presented and swiped, inserted or tapped through a Terminal (except for Mail Order, Telephone Order (MOTO) or Online Transactions);
- v) you did not act in accordance with the Terms and Conditions of the Agreement in relation to the Transaction;
  - i. as payment for goods or services you have processed a Mail Order Telephone Order (MOTO) or Online Transaction.
  - ii. because the Transaction was done without specific prior authorisation in writing from us to process this type of Transaction;
  - iii. because you processed a Transaction knowing (or in circumstances where you should have known) that the Transaction is fraudulent;
  - iv. the Card is not signed.
- w) We can decide whether or not a Transaction is invalid if:
  - i. the Customer disputes liability for the Transaction for any reason;
  - ii. there is a set-off claim or counterclaim; or
  - iii. at a later stage we identify that a Transaction is invalid.

## **9. AUTHORISATION AND FLOOR LIMITS**

**9.1** You must obtain an Authorisation for all transactions regardless of your Floor Limit.

**9.2** You will be allocated a default zero floor limit that ensures all card transactions are authorised by the Card Issuer.

**9.3** An Authorisation only confirms that there are sufficient funds available at the time the Authorisation is given, to cover the purchase and that the Card has not been reported lost or stolen. It does not guarantee or confirm the Transaction in relation to the matters set out in clause 6 of these Terms and Conditions nor does an Authorisation protect you from a subsequent Chargeback.

**9.4** You must obtain prior Authorisation for any Transaction where;

- a) the Card signature panel is blank;
- b) you think that there is an unauthorised use or forgery of the Card;
- c) the embossed Card number is different to the displayed indented, encoded or displayed number on the Card; or
- d) Terminal is unable to read the chip or magnetic strip on the card.

## **10. SETTLEMENT AND PAYMENT OF TRANSACTIONS**

**10.1** You must hold an Account with BSP;

- a) into which we can pay the full amount of all valid, acceptable sales and cash Transactions you have made;
- b) from which we can deduct all relevant fees, charges, and Chargeback invalid transactions;
- c) from which we pay the full amount of valid, acceptable refunds you have made.

**10.2** We may refuse to accept or may Chargeback any Invalid Transactions we have processed to you, your Account or any other account you have with us.

**10.3** We reserve the right, where we suspect that a Transaction is an Invalid Transaction, to;

- a) withhold payment; and
- b) place a hold on your Account or any other account you hold with us for an amount equal to the amount we believe could become owing to BSP in respect of the Transaction;

**10.4** We will investigate a Transaction and either;

- a) pay the Transaction;
- b) refuse to process the Transaction and return the Transaction to you; or,
- c) where the Transaction has been processed, Chargeback the Transaction.

**10.5** You agree and authorise us to monitor Transactions you process and the use of the Terminal and investigate Transactions we find suspicious.

**10.6** All Fees, charges and costs payable by you under the Agreement are quoted in the Letter of Offer excluding applicable taxes. Where (in respect of any goods or services tax, value added tax or similar tax on the supply of goods or services or a withholding tax) any party (the supplier) makes a taxable supply under the Agreement to the other party (the receiving party), the receiving party will pay to the supplier the tax payable on the supply. The supplier will provide a tax invoice where required by law.

## 11. YOUR RECORDS

**11.1** For all Transactions, you must keep the original receipt for 12 months after the Transaction date in a secure location. In addition, when a Card is not present when processing a Transaction (Mail Order/Telephone Order (MOTO) / Online Transactions using Cards), keep any evidence of the Customer's request to order the goods or services and instructions to process the Transaction for at least 12 months (e.g. order form, etc.).

**11.2** You must give us evidence satisfactory to us of a Transaction within 7 days if we ask for it or upon demand in special circumstances (e.g. legal proceedings). If you cannot do this and we cannot collect the amount of the Transaction from the Customer, we can debit your account for the Transaction amount.

**11.3** You must keep records of accounts, receipts, invoices and other documents relating to your obligations under this Agreement.

**11.4** You must let us examine your records relating to any Transaction. You must give us copies of these records, at your expense, if we ask for them. You agree to allow us or our agent access to your place of business during business hours, to examine your records and take copies.

**11.5** You cannot sell, buy, exchange or provide any information about a Customer or Transaction except:

- a) to us;
- b) to your professional advisors (e.g. your accountant, solicitor etc.);
- c) to the Card Issuer; or
- d) when requested by law.

**11.6** When the period for which you are required to keep records has expired, you must ensure that you destroy Transaction records including receipts. The documents must be destroyed in a secure manner so that any customer information including any account number is obliterated.

## 12. YOUR ACCOUNT

**12.1** We will credit your Account with the amount of the transactions processed. You will notify us immediately if your Account details change. In some circumstances (e.g. E-Commerce Service) it will be necessary for transactions to settle to a BSP account. You will be advised of this requirement at the time of application.

**12.2** We can debit your Account with the following:

- a) all service charges, fees and other charges set by us and which are notified to you from time to time. Information on current standard fees and charges is available on request;
- b) all government charges and taxes including applicable local taxes or other relevant tax, that may arise due to your operation of any Merchant Facility Services listed in this Agreement;
- c) the full amount of all sales refund transactions you process, less any charges we have already debited to your Account relating to the transaction;
- d) any over credits we have made in respect of transactions due to errors or omissions;
- e) the value of transactions which are invalid;
- f) any fees, fines or penalties that we are required to pay to any Card Scheme pursuant to the Rules as a direct or indirect result of your failure to observe your obligations under the Agreement including any procedures set out in the Service Guides;
- g) any other money you owe us; and
- h) reasonable enforcement expenses under the Agreement, including any amount reasonably incurred by the use of our staff and facilities, in the event of a breach of the Agreement.

**12.3** If we debit the Account in which there are insufficient funds, then the payment may be reversed and you will be regarded as not having made the payment. If you ask us to cancel a request to arrange direct debit payments we will do so promptly. However you will need to establish a direct debit payment request with another financial institution. We will promptly process any complaint by you that a direct debit was unauthorised or otherwise irregular.

**12.4** You will pay on demand the amount of any debt you owe us under this Agreement which remains unpaid. Should you fail to pay any debt which you owe us we may commence enforcement action and report your default to a credit-reporting agency, which may affect your credit rating and your ability to obtain finance in the future.

**12.5** We can also debit or credit your Account with the amount of any deficiencies or charges we establish are payable following an audit or check of your Account.

- 12.6** In addition, we may withhold release of the funds in the Account until further notice, if:
- a) we have concerns about your solvency;
  - b) you are involved in a disproportionately high number of charge backs or invalid transactions; or
  - c) we have concerns about you or your business;

**12.7** We may appropriate money you hold in your Account, or any other related account with us, towards any and all amounts you owe us under the Agreement. If we do this, the balance of your Account will reduce by the amount used for this purpose. We will notify you promptly after exercising our right to appropriate money in your Account.

**12.8** In relation to BSP Agent Banking Service, in addition to your obligations outlined in clause 18, you are also to ensure that your Account has sufficient funds to meet the Threshold Holding Amount at all times.

- 12.9** We reserve the right, where we suspect that a Transaction is an Invalid Transaction, to:
- a) withhold payment; and
  - b) place a hold on your Account or any other account you hold with us for an amount equal to the amount we believe could become owing to BSP in respect of the Transaction.

**12.10** You agree and authorise us to monitor Transactions you process and the use of the Terminal and investigate Transactions we find suspicious.

### **13. RESERVATION GUARANTEE**

**13.1** This section only applies where you have been authorised to accept Card Transactions to guarantee reservations for future services or acquisition of goods. (Reservations)

**13.2** The Card Schemes have arranged for their members a program that permits their Customers to guarantee reservations by telephone.

- 13.3** You agree to:
- a) handle the reservations in accordance with the Rules;
  - b) honor these reservations in all circumstances; and
  - c) cancel the reservation and, where necessary, issue a refund to the Customer if the Customer cancels the reservation.

**13.4** If there is a dispute, you shall accept a chargeback where the Customer claims the guaranteed reservation was cancelled.

### **14. E-COMMERCE MERCHANTS AND MAIL ORDER / TELEPHONE ORDER (MOTO)**

**14.1** This clause applies to E-Commerce Merchants conducting Online Transactions and Merchants using MOTO on EFTPoS. To the extent that there is any inconsistency between this clause and the other provisions of the Agreement, this clause will apply.

- 14.2** You must undertake a user acceptance testing before commencing live operations on your website. We will convert you to live operations when we are satisfied that you meet our operational requirements listed below:
- a) Your website must be SSL secured;
  - b) Your website must have a shopping cart;
  - c) Have a privacy policy;
  - d) Have a refund policy; and
  - e) Have delivery or shipping policy if you are delivering goods to your customers.

**14.3** You shall be responsible for all goods and services offered at your website, all materials used or displayed at the website, and all acts or omissions that occur at the website or in connection with your website. BSP will not be responsible or liable for any delay that might occur in the processing of payments where the service is not available for any reason.

**14.4** Your website must be substantially similar to your trading name and your website must be designed in such a way that a reasonable Customer is able to readily identify it as your website without any confusion.

- 14.5** You will display the following on your website:
- a) contact information, including your trading name, trading address, telephone number, e-mail address and your country of domicile;
  - b) a complete description of all goods and services you offer on your web site;
  - c) a clear explanation of shipping practices and delivery policy;

- d) transaction currency;
- e) total costs of the goods or services offered including all appropriate shipping/ handling charges and taxes. Where the total cost of the transaction cannot be ascertained in advance you must include a statement to that effect and provide a description of the method that will be used to calculate it;
- f) customer service policies, including usual delivery timeframes, and the process if you cannot fill the order for any reason. You must advise your customers within two business days if goods are not available;
- g) refund/return policy;
- h) consumer data policy;
- i) security capabilities and policy for transmission of payment Card details;

**14.6** You will make provision for payment and delivery of goods or services as specified at your website. BSP will provide the payment pages from our Accredited Gateway Provider/Data Processor. Each merchant domain must utilize separate payment pages.

**14.7** The Online Transaction forwarded to us must be identified with the appropriate Card Scheme e-commerce indicator. We will supply you with details of these requirements on request.

**14.8** You will respond promptly to all customer inquiries, including cancellations and order changes.

**14.9** You must provide a completed copy of the transaction receipt to the Customer at the time the purchased goods are delivered or services performed, and advise the Customer to retain the receipt as proof that payment has been made.

**14.10** A transaction receipt must contain the following information:

- a) the merchant name most recognizable to the Customer, such as:
  - i. merchant "doing business as" name as used on your website;
  - ii. merchant "universal resource locator" (URL) if possible;
- b) transaction type (purchase or credit);
- c) transaction amount, indicated in transaction currency;
- d) transaction date;
- e) unique transaction identification number;
- f) purchaser's name;
- g) authorisation code; and
- h) description of goods and services.

**14.11** You must not return the Customer's Card number to the Customer either online or on the transaction receipt.

**14.12** You must:

- a) not substantially change your goods or services or other material aspects of your website from the time it was accepted by us;
- b) keep all information on the website true, accurate, current and complete;
- c) not change your domain name without first obtaining our consent to the change of name;
- d) not significantly alter, or add to, the type of goods or services being sold on your website without first notifying us;
- e) not do anything that constitutes or encourages a violation of any applicable law or regulation in your jurisdiction or the laws of the Customer's jurisdiction, including but not limited to the sale of illegal goods or services or the violation of export controls, obscenity laws or gambling laws;
- f) not offer for sale goods or services, or use or display materials, that are illegal, obscene, vulgar, offensive, dangerous, or are otherwise inappropriate;
- g) not generate a significant number of complaints for failing to be reasonably accessible to customers;
- h) fulfil customer orders in a timely manner or adequately deal with customers' warranty or service requirements;
- i) process the transactions in accordance with the service guidelines..
- j) maintain a relationship with an internet service provider at your own expense to maintain the website and facilitate e-mails;
- k) give us 10 Banking days prior notice in writing if you wish to change your internet address, e-mail address, telephone or website name;
- l) provide us with reasonable access to view, monitor and inspect the pages of your website.

**14.13** You are responsible for:

- a) ensuring that the connection between your website and us is operational. We do not warrant that the provision of the services will be continuous, uninterrupted or without errors;
- b) ensuring that your website is secure and that Customer information is encrypted during the exchange of Customer information between your web site and the Payment Gateway.
- c) ensuring that your business, and any Service Provider who participates in the transmission, acceptance or storage of card payment details for your business on your behalf, fully complies with the PCIDSS standard.

**14.14** When approved for an E-Commerce Service, any transactions received from Customers relating to the internet business for which it was approved must be processed using your approved E-Commerce Service.

**14.15** If you are approved as a BSP merchant you must willingly, upon request and at pre-determined intervals, supply BSP with full details of your Web Hosting Provider, Shopping Cart Vendor System, SSL provider and expiration date of SSL certificate.

**14.16** You must comply with the Data Breach procedures below immediately upon suspected or known breaches of confidential Customer payment details, whether or not the breach has occurred through your Service Provider or otherwise. You must:

- a) Identify the cause of the event and immediately notify BSP;
- b) Isolate or unplug any affected systems from all affected networks ;
- c) Cease installing or making any change to software;
- d) Tighten security controls pertaining to all affected networks;
- e) Implement and follow a disaster recovery plan as required by an BSP; and
- f) Maintain a rigorous audit trail of all actions taken to isolate and rectify the event;

**14.17** You must ensure that any software or hardware you purchase, create or otherwise utilise for the purpose of selling goods and/or services online does not retain its original password before employing it for the acceptance of Cards. You must also ensure that all system and/or software passwords are changed on a regular basis.

**14.18** You must not add a non-approved merchant domain to your E-Commerce Service or payment page. Failure to comply will result in immediate termination of your E-Commerce Service.

**14.19** For all Mail Order Transactions you must provide the Customer a receipt containing the information set out below, as soon as possible after processing a Transaction:

- a) transaction amount;
- b) date (and time if practical);
- c) a description that identifies the goods or services provided;
- d) the account type; and
- e) details of Card and Merchant

**14.20** You must provide a receipt number for the Transaction and keep a record of it.

## **15. MOBILE MERCHANT SERVICES**

**15.1** This clause applies where a BSP Mobile Banking Service is available in your country which offers mobile payments for a Mobile Merchants service. Merchants can apply to be set up on the mobile banking platform to receive direct payments to their nominated merchant accounts from registered mobile banking customers.

**15.2** The BSP Mobile Banking Service will enable customers to conduct banking transactions to pay for various retail payment such as education fees to the school, utility and biller payments, general payments of consumer services and products.

**15.3** Mobile Merchants are required to submit an application for Mobile Payment Service that is signed by Merchant Account signatories, providing merchant account details to be registered on the Mobile Banking platform to receive real-time mobile banking payments to the nominated merchant bank accounts.

**15.4** BSP registers the Merchant Name and Merchant Account Number on the BSP Mobile Banking Service and issues a Merchant Code (Unique Identifier Number) to the Merchant. The Merchant Code is used to select the Merchant whilst making payments on Mobile Banking.

### **15.5 Mobile Merchant Functions**

- a) The Merchant will be registered to BSP Mobile Banking platform as a service provider. The Merchant's bank account will be credited with funds from payers.
- b) The Bank will send Daily Mobile Merchant Transaction reports of the mobile banking transactions.

### **15.6 Mobile Banking Service Availability**

BSP will use reasonable efforts to make Mobile Banking service available for the customer's use on a continuous basis. BSP does not guarantee functionality of Mobile Banking services on all Mobile Banking devices, on all communication networks, in all geographic locations in your country or at all times. Mobile Banking service may be temporarily unavailable for regular or emergency system maintenance. If BSP chooses to discontinue Mobile Banking, a reasonable notice will be provided to the Merchant and announced publicly to customers.

### 15.7 Fees

Services fees for mobile banking merchants will be stated in the Fee Schedule in the Letter of Offer to you. We may introduce new fees or vary existing fees to the Merchant participating on the mobile banking service platform as individual circumstances require at any time in writing or advertising in the media in accordance with clause 20.2

### 15.8 Disputes and Refunds

All disputes, payment errors or refunds to the party or parties will be determined through the BSP dispute process which requires the payer to lodge a BSP Disputed Transaction form at any branch or BSP Customer Service Centre 3201212 or 70301212 or email [servicebsp@bsp.com.pg](mailto:servicebsp@bsp.com.pg). We aim to resolve any dispute, payment errors or refunds within seven (7) Business Days. If this is not possible, we will keep the party or parties informed of the progress of the matter and how long we expect to take to resolve the issue.

### 15.9 Feedback

The Merchant agrees to:

- a) use the service and cooperate with BSP in evaluating the service;
- b) if requested, work with BSP to identify and resolve any errors, problems or defects in the service discovered by the Merchant or BSP. The Merchant may be asked to provide BSP with feedback report in connection with the service and the related services.

### 15.10 Ownership

BSP or its third party vendor is the owner of all rights, title and interest in and to the mobile banking technology solution made available to you hereunder, including but not limited to any computer software and programs contained therein, as well as any accompanying user documentation, marketing materials and all subsequent copies, updates or versions thereof, regardless of the media or form in which they may exist.

## 16. QUASI-CASH TRANSACTIONS

**16.1** This clause applies to Quasi-Cash Merchants conducting Quasi-Cash Transactions. To the extent that there is any inconsistency between this clause and the other provisions of the Agreement, this clause will apply.

**16.2** You must identify the Customer as follows:

- a) where the Card does not bear a photograph of the Customer, you must sight positive identification of the Customer, and indicate the type of identification sighted, including any serial number, on the transaction receipt; or
- b) where the Card bears a photograph of the Customer, you must note on the transaction receipt that you verified the Customer's identity by the photograph on the Card.

**16.3** You must verify the following:

- a) where clause 16.2(a) applies, on the identification presented; and
- b) where clause 16.2(b) applies, the Customer resembles the person depicted in any photograph intended to be used as identification on the Card.

**16.4** You must do the following before completing the transaction:

- a) compare the first four digits of the embossed Card account number to the first four digits printed below the Card account number; and
- b) record the printed first four digits on the front of the transaction receipt.

**16.5** You must clearly disclose to the Customer any commission you charge for accepting a Quasi-Cash Transaction and include in the total transaction amount, before completing the transaction.

## 17. TRUSTEES

**17.1** This clause applies where you are the trustee of a trust.

**17.2** You confirm:

- a) the trust is validly formed. Any relevant trust document is valid and complies with the law;
- b) any copy of the trust document you have given us is a true and complete copy and discloses everything about the trust;
- c) you are properly appointed as sole trustee of the trust;
- d) you have always fully complied with the terms of the trust, and your duties and powers. No one has said that you have not done so;
- e) you have a full right of indemnity from the trust assets in respect of the Agreement;
- f) you have properly signed the application form under the terms of the trust and in accordance with your duties and powers as trustee, or if there is any doubt and all beneficiaries have full legal capacity, you have obtained their

- consent;
- g) the Agreement and the transactions entered into under it are for proper trust purposes;
- h) you have done everything required under the trust document to enter into the Agreement and the transactions it contemplates;
- i) none of the trust assets have been resettled or set aside;
- j) the trust has not terminated nor has any event for the vesting of the assets occurred.

**17.3** You promise:

- a) you will comply with the terms of the trust and your duties as trustee of the trust;
- b) you will use all equipment and carry out all transactions in accordance with the Agreement exclusively for proper trust purposes;
- c) you will not do anything which may result in the loss of your right of indemnity from the trust assets or the termination of the trust;
- d) you will remain sole trustee of the trust (with anyone else who signs the application form as trustee);
- e) if, despite the above, you are replaced or joined as trustee, you will make sure the new trustee becomes bound to our satisfaction by the Agreement or a document and arrangement of identical effect;
- f) you will not re-settle, set aside or distribute any of the assets of the trust without our consent unless compelled to do so by the current terms of the trust document.

## **18. BSP AGENT BANKING**

**18.1** This clause applies to Cash Transactions via the BSP Agent Banking Service. To the extent that there is any inconsistency between this clause and the other provisions of the Agreement, this clause will apply.

**18.2** BSP appoints you (as a BSP Agent) to operate the BSP Agent Banking Service at the premises specified in your Merchant Agreement commencing on the date specified in your Merchant Agreement, unless terminated earlier in accordance with this Agreement, this agreement will be for the term specified in the Merchant Agreement.

**18.3** In the event that you continue to operate the BSP Agent Banking Service after the expiration of the Terms with the consent of the BSP, these terms and conditions will continue to apply.

**18.4** In relation to BSP Agent Banking Service, upon instructions from the Customer, you agree to facilitate the following on behalf of BSP:

- a) deposit to a Customer's account(s);
- b) withdraw funds from the Customer's account(s);
- c) funds transfers between the Customer's account(s); and
- d) balance enquiry on their account;

**18.5** Legislative requirements may impact any change to functions to be performed by you. In the event that revised functions will require compliance with legislative or regulatory requirements by BSP and or you, BSP may amend this Agreement accordingly and give notice of the amendments to you acknowledged in writing.

**18.6** You must ensure that you and your employees do not offer any advice, including financial product advice to Customers.

**18.7** You must not seek or obtain any form of brokerage or commission charge directly or indirectly from Customers seeking to obtain any form of financial accommodation from the BSP.

**18.8** You must notify us as soon as possible once you decide to sell the business from which the BSP Agent Banking is provided. We are not obliged to agree to transfer the benefit of this Agreement to any new proprietor of your business or to any other person or entity. You should ensure that all staff engaged in the BSP Agent Banking Service within your business:

- a) are fit and proper persons, having regard to the types of for the transactions to be carried out using the BSP Agent Banking Service;
- b) have completed the BSP Agent Banking Service training in accordance with BSP's requirements.

**18.9** We may, at our discretion, withdraw the authorisation for you and your staff to operate Agent Banking Service at any time by giving 30 days' notice in writing to you.

**18.10** You must not, under any circumstance, allow staff who have not undertaken the training or who are not accredited/ authorised to carry out any functions in connection with the BSP Agent Facilities.

**18.11** You must maintain a Holding Account with us into which commission may be paid.

**18.12** BSP will pay to you commissions and fees calculated at the rate specified in the Letter of Offer at the times and in the manner specified.

**18.13** BSP may set off against any amounts it owes you or any amounts owed by you to BSP including amounts owed as a result of an indemnity provision under clause 22 or where BSP has a right under these Terms and Conditions to recover an amount from you.

**18.14** You authorise BSP to debit Chargeback's to your Account with notice of any deficiencies or over-charges established after audit or check by BSP of your Account.

**18.15** You must not without the prior written consent of BSP make any public statement concerning the business of BSP.

**18.16** You must not hold yourself out as having any authority in excess of your authority under this agreement.

## 19. RECORDS

For BSP Agent Banking Service, the records will be property of BSP. You shall:

- a) permit us to inspect and examine your books of account and records relating to any Transactions;
- b) maintain all sales and refund transaction information for at least 12 months after the date of the transaction;
- c) not sell, purchase, provide or exchange a Customer's name or Card number information in the form of, mailing lists, tapes, computer data or any other media obtained by reason of a Card transaction. This clause shall not prohibit you from providing Card number information to your agent solely to allow your agent to process Card transactions to us on your behalf;
- d) keep all systems and media containing a Card number, Customer or transaction information in a secure manner to prevent access by or disclosure to anyone other than your authorised personnel or agent processing Card transactions. If the item needs to be discarded, you shall destroy it in a manner which makes the information unreadable; and
- e) provide us with all clear and legible documentation relating to a transaction when requested and within 14 days of our request or the due date specified in our request, whichever is the earlier. Otherwise we may treat the transaction as invalid and process a chargeback to your Account.

## 20. VARIATIONS

**20.1** We may change the terms and conditions that apply to your Service at any time and will notify you of any changes.

**20.2** You agree that we may notify you of changes as set out in the table below. Use of your Service after notification of changes to the terms and conditions will constitute acceptance of those changes.

Type of Change	Time Frame	Method of Notification
New fee or charge	30 days in advance	Direct correspondence or advertised in the major newspapers or BSP's social media platforms.
A new or varied government charge that directly or indirectly affects you	In advance of the change, or as soon as practicable if publicity is issued by Regulator or Government agency or representative.	Direct correspondence or advertised in the major newspapers or BSP's social media platforms.
Any other term or condition (including a variation of fees and charges)	In advance of the date of the change	Direct correspondence or advertised in the major newspapers or BSP's social media platforms.

**20.3** Advanced notice may not be given in some circumstances, for example, when a change is necessitated by an immediate need to restore or maintain the security of our systems or where you cannot be reasonably located.

**20.4** Notwithstanding clauses 20.1 - 20.4 above, BSP reserves the right to vary, or amend the Terms and Conditions of this Agreement. BSP may alter these Terms and Conditions at any time by giving not less than seven (7) days' notice to you, either by:

- a) direct communication with you (e.g. by letter, by email or by telephone); or
- b) by an advertisement in a major newspaper or via BSP's social media platforms.

**20.5** Where these Terms and Conditions are set out on our website, the change will also be noted there. You are deemed to have accepted any changes to the Terms and Conditions through your continued use of your Service.

**20.6** In the event that you do not agree to any change to the Terms and Conditions, you must contact and advise BSP immediately in writing. BSP may then elect to terminate this Agreement in the event you do not agree to any changes to the Terms and Conditions.

## 21. NOTICES

**21.1** They might be provided in writing including by statement of account, by email, by newspaper advertisement or through BSP's social media platform depending on the nature of the notice.

**21.2** You can give us a notice by posting it in a prepaid envelope or by transmitting by email to our address listed at the back of this document. We reserve the right to seek confirmation from you before acting upon any email received.

**21.3** Unless we tell you or you tell us in writing, notices are to be delivered to the last address given. When notices are posted, they are taken as received on the tenth day after posting. When notices are sent by email, the message is deemed to have been received by 9am on the next Business Day and provided that if any email produces an automated response reporting a failure to deliver, delayed delivery to the intended recipient or "out of office" reply, such email shall be deemed not to have been received by the addressee.

## 22. WARRANTIES AND INDEMNITIES

**22.1** You must not make any warranty or representation whatsoever in relation to any of your goods or services which may bind us.

**22.2** The processing of any transaction by you or your presentation to us of any receipt shall constitute warranties to us that:

- a) all particulars are true;
- b) the transaction and any receipt is valid; and
- c) the sale is not subject to any dispute, set off or counterclaim.

**22.3** You will indemnify us on demand against all losses, expenses and damages we may suffer:

- a) as a result of your failure to observe your obligations under the Agreement including any procedures set out in the Service Guides;
- b) as result of you, your employees, contractors, agents or invitees acted dishonestly or illegally when using the Terminal;
- c) we processed a Transaction initiated by you;
- d) as a result of Invalid Transactions or any loss arising from unauthorised use of your refund password;
- e) as a result of any Card Scheme imposing fees, fines or penalties on us in accordance with the Rules as a direct or indirect result of your failure to observe your obligations under the Agreement including any procedures set out in the Service Guides;
- f) arising out of any dispute between you and a Customer;
- g) as a result of any error, negligence or fraud relating to a transaction by you, your servants, agents, employees or contractors;
- h) arising out of any damage to, or loss of the terminals we supply due to you, or your employees' neglect or misuse;
- i) arising out of any dispute between you and the Terminal Supplier;
- j) as a result of your failure to keep cash and negotiable instruments in a locked security safe or in any other manner approved in writing by us;
- k) in connection with Agent Banking Service, if you recorded an incorrect amount or an incorrect account details contrary to the instructions of the Customer;
- l) as a result of your or your employees' failure to keep Customer's banking information, and Confidential Information, where supplied to you, confidential; and,
- m) as a result of any fees, fines or penalties that BSP is required to pay pursuant to the rules, by-laws or regulations of any Card Scheme that BSP is a member of or participates in, as a direct or indirect result of your failure to observe any of the procedures, requirements or obligations required to be complied with by you under any Card Scheme used in providing the Service.

**22.4** With the exception of any conditions, rights or warranties that are implied by law in this Agreement and may not legally be excluded, we give no warranty or representation in respect of any transaction or terminals and all other terms, conditions or warranties whether expressed or implied are expressly excluded.

**22.5** You acknowledge that our liability for breach of any condition, right or warranty that cannot be excluded from this Agreement by law is limited to the replacement or the repair of the terminals.

**22.6** Any payments made by you under this clause shall be automatically increased by the amount of any goods and services tax liability incurred by us in respect of those payments.

**22.7** PCIDSS Training – MOTO Merchants:

- a) MOTO Merchants will undertake PCIDSS Training conducted by BSP and sign in agreement to comply and adhere to the requirements of the PCIDSS Guidelines. Training and set up of Merchant Staff compliance procedures must

be completed within three (3) months of being granted the Service.

- b) Non-compliance to clause 22.7 (a) will place your Merchant service in the non-compliant status, which will attract non-compliance fines from the Card Scheme, which will be passed on to you.
- c) In the event that your business undergoes a card Data Breach incident and the Merchant is found to have not complied with clause 22.7 (a), BSP will pass any penalties levied by the Card Schemes to the Merchant.

#### **22.8 Data Breach:**

- a) Upon a Data Breach incident, you must follow the Data Breach procedure in clause 14.16 and give BSP and its authorised agents full access to your systems and databases to facilitate a forensic analysis to ascertain:
  - i. what card data has been compromised;
  - ii. what weaknesses in the system permitted the unauthorised access to the database;
  - iii. whether card data was created, deleted, altered, copied or manipulated in any manner; and
  - iv. how may cardholders have been affected and the nature of the data accessed, disclosed or lost.
- b) If you use the services of an external Service Provider, you must ensure that BSP and its agents are given full access to necessary outsourced components such as but not limited to databases, web hosting systems, etc.
- c) You must pay all costs in connection with analysing and resolving the Data Breach.

#### **22.9 Consent to share information:**

- a) BSP is obliged to report all Data Breach events to Card Schemes and may be required to report Data Breaches to law enforcement agencies and/or regulators in your jurisdiction. You agree to grant an irrevocable and enduring consent to BSP to disclose details of any such Data Breach (including information about you or your customers) to the aforementioned bodies.
- b) You agree to irrevocably confer upon BSP the enduring right to contact any Services Providers that enable you to acquire Card transactions. This clause 22.9(b) is limited to the purpose of determining the extent of a Data Breach, assessing remedies for that Data Breach and assessing your level of compliance with PCIDSS.

**22.10** BSP will notify you if you have excessive chargebacks in any particular category or if a particular category is in threat of exceeding your Credit Limit. You must take immediate action to rectify the situation. Failure to resolve the cause of the problem will result in non-compliance Card Scheme fines which will be passed on to you.

#### **22.11 We may disclose your personal information to:**

- a) other organizations to help us to assess financial risk or to recover debt;
- b) credit reference agencies;
- c) other persons associated with or related to BSP Financial Group Limited, including BSP advisers, consultants or service providers, any of BSP's subsidiaries, branches, head office or representatives;
- d) any authority, regulator or government agency in any jurisdiction as BSP may in its absolute discretion consider appropriate, necessary or advisable;
- e) other organisations to assist us in compliance obligations in respect of sanctions, anti-moneys laundering, counter-terrorism financing and proceeds of crime; and
- f) the United State Internal Revenue Service to assist us in compliance with our obligations under our arrangements regarding the Foreign Account Tax Compliance Act ("FATCA").

### **23. CODE OF BANKING PRACTICE**

**23.1** This clause applies if there is a Code of Banking Practice applicable to the Services in the country in which your business operates at any time and from time to time during the Term of the Merchant Agreement.

**23.2** The provisions of any Code of Banking Practice referred to in clause 23.1 will apply to the Services provided to you under this Agreement from the date we adopt those provisions or they are imposed upon us by any law.

### **24. FINANCIAL CRIMES MONITORING AND ANTI-MONEY LAUNDERING**

**24.1** In order for BSP to meet its regulatory and compliance obligations for anti-money laundering and counter financing of terrorism, we will apply certain levels of control and monitoring in respect of transactions under or with respect to the Agreement

#### **24.2 You should be aware that:**

- a) transactions may be delayed, blocked, frozen or refused where we suspect they may breach the law in the country in which your business operates or the laws or sanctions of any other country. Where transactions are delayed, blocked, frozen or refused, BSP and its accredited processors are not liable for any loss your business suffers

(including consequential loss) whatsoever caused in connection with the Service;

- b) we may from time to time require additional information from you to assist us in order to meet our anti-money laundering and counter financing of terrorism obligations. This information may include “personal information” as defined by any privacy legislation in your jurisdiction. If we request such information you must provide us with the information immediately, or at least within 24 hours of such a request;
- c) where legally obliged to do so, we may disclose the information gathered to regulatory and/or law enforcement agencies, other banks and financial institutions, subsidiary companies and branch offices of BSP Financial Group Limited, service providers who do things on our behalf or to other third parties;
- d) where we believe that a suspicious matter has arisen in relation to the Service, we may complete and render a report to the relevant regulatory authority in your jurisdiction. A suspicious matter includes any transaction that BSP suspects may involve criminal property or may be of relevance to the investigation or prosecution of any breach or attempted breach of a law of your jurisdiction (including laws related to money laundering, tax evasion, financing of terrorism or the proceeds of crime).

**24.3** You provide BSP the following undertakings and indemnify BSP against any potential losses arising from any breach by you of such undertakings:

- a) You will not initiate, engage in, or effect a transaction that may be in breach of the law or sanctions of any other country; and
- b) the underlying activity/product for which the Service is being provided does not breach the law or sanctions of any other country.

**24.4** You must not initiate, engage in or effect a transaction that may be in breach of the law of any other country.

## **25. ASSIGNMENT**

**25.1** This Agreement shall be binding upon the parties, their executors, administrators, successors and assigns. Where you consist of any two or more persons, your obligations shall be joint and several.

**25.2** You may not assign this Agreement to any other person without our written consent.

**25.3** We may enter into this Agreement as principal or agent.

## **26. TERMINATION**

**26.1** You may terminate this Agreement by giving us 30 days written notice.

**26.2** We may terminate this Agreement at any time and for any reason. The grounds on which we may do so include, but are not limited to, the following:

- a) You apply a transaction fee to any Customer;
- b) we consider your ratio of chargebacks to sales, whether by number or currency value of chargebacks, to be excessive;
- c) you have substantially changed your line of business, or the types of goods or services that you supply to your customers or clients without first notifying us and obtaining our consent;
- d) we have concerns about your solvency, or the solvency of your business;
- e) we have concerns about your ability to meet or repay the amounts of any chargebacks that have been received, or that are likely to be received in the future conduct of your business;
- f) you have a significant adverse credit event recorded against you;
- g) we suspect that you have fraudulently processed transactions, or have knowingly allowed fraudulent transactions to be processed through your Service;
- h) you or any service provider that you use has suffered a data breach;
- i) you have breached any rules set by the Card Schemes applicable to your Service;
- j) without our prior approval, you cease to operate the Service, or abandon the Service or the business premises, or otherwise lose the right to occupy the business premises, or fail to relocate to alternative premises notified by us as being acceptable to carry out the specified Service;
- k) if you assign the benefit of this agreement without consent of BSP or in any other way purport to transfer, charge, encumber or alienate your interest in the agreement;
- l) if you are a corporation and there is a change in the direct or indirect principal shareholders of the corporation, a change of directors or a reduction in the issued or authorised capital of the corporation;
  - i. if we must comply with a court order;
  - ii. if you have acted unlawfully;
  - iii. if you do not agree to any changes we make to the Terms and Conditions; or
  - iv. if your Service is used, or attempted to be used, for an improper purpose.

**26.3** Where this Agreement is terminated pursuant to clause 26.2 BSP will not be liable for any consequential loss or damage you suffer as a result either directly or indirectly from the termination.

**26.4** We will endeavor to give you verbal or written notice before we terminate this Agreement. If we are unsuccessful in contacting you, we can choose to continue to terminate the Service and the Agreement. However, we will give you subsequent written confirmation that the service has been terminated.

**26.5** We may terminate this Agreement on the grounds that you have not processed transactions through your Service for a period of six (6) months. Under these circumstances we will notify you, in writing, of our intention to terminate 14 days from the date of our notice. After that time, we may terminate the service without further notice.

**26.6** Termination will be effective immediately after the 14 days period has lapsed. On termination you must cease to use your Service immediately, and cease to use BSP's trademarks and intellectual property immediately. BSP is not obliged to accept any transactions you process after the Agreement is terminated.

**26.7** On termination you will ensure that arrangements are put in place for the immediate return of all equipment provided to you (terminals, equipment and other supplies). Fees and charges will continue to be incurred by you until the equipment is returned to us.

**26.8** A combined terminated merchant file is a list held by us containing the business name and the names and identification of principals of merchants that have been terminated by acquiring financial institutions. You consent to us providing this information to Mastercard, Visa, American Express, UPI and JCB for addition to the file if this Agreement is terminated. You consent to us sending this information to any card scheme office located in any jurisdiction. You shall indemnify us against all claims, actions, suits, losses, defaults, damages and liabilities resulting from the inclusion of you or your principals on this file. Any payments made by you under this clause shall be automatically increased by the amount of any applicable local taxes or other relevant tax liability incurred by us in respect of those payments.

**26.9** A terminated Internet merchant file is a file held by us containing the merchant name, trading name and address, names and identifications of principals, owners, managers and key employees of merchants, account details, listing reason and Uniform Resource Locator (URL) of Internet merchants terminated for poor card acceptance practices. You consent to us providing this information for addition to this file if this Agreement is terminated for cause. You consent to us sending this information to any Card Scheme office. If this Agreement is terminated due to poor card acceptance practices, you shall indemnify us against all claims, actions, suits, losses, defaults, damages and liabilities resulting from the inclusion of this information on this file. Any payments made by you under this clause shall be automatically increased by the amount of any goods and services tax liability incurred by us in respect of those payments.

**26.10** We are entitled to charge you a termination fee stated in the Letter of Offer (if any) at our discretion.

**26.11** Irrespective of the reason for terminating this Agreement or the party seeking the termination, our rights and authorisations under this Agreement, including, but not limited to, our right to directly charge your Account for outstanding fees and charges, sales refunds, invalid transactions – including chargebacks, or any other amounts owed to us or a Card Scheme, remain in full force and effect after termination.

**26.12** When this Agreement ends, you must return all Terminals, stationery, decals, equipment, guides and other material we gave you. We will continue to charge you the Terminal Rental fee until the Terminal has been returned to us.

**26.13** If the Agreement ends you agree we can inform any person that the Agreement has ended.

**26.14** You authorise BSP to disclose to any Card Scheme advice of termination of the Agreement and the reasons for termination of the Agreement. You acknowledge that the information concerning termination of the Agreement then becomes available to any member of the Card Scheme(s). This information, available to any member of the Card Scheme(s), may be used in assessing subsequent applications for Merchant Facility Services, and may result in the application being declined.

## **27. INTELLECTUAL PROPERTY AND USE OF BSP TRADEMARKS**

**27.1** You must not register or apply to register the business name 'BSP' or any other trade name or business name belonging to or associated with BSP or the BSP Financial Group Limited.

**27.2** You must not use the word 'BSP' or any one or more of BSP's trade marks in your trading name and you must not register or apply to register any part or all of BSP's trademarks or any words, logos, insignia or characters similar to or likely to be confused with BSP's trademarks.

**27.3** Where you are permitted to use our trademarks in connection with the Merchant Facility, you must always follow our instructions and guidelines regarding the correct use of our trademarks.

**27.4** You will not acquire any right, title or interest (except for the non-exclusive license to use our trade marks in the conduct of the Merchant Facility Services in:

- a) BSP's trademarks;
- b) confidential information of BSP;
- c) BSP's intellectual property; or
- d) any BSP methods.

**27.5** You will not acquire any right, title or interest in any goodwill associated with and attaching to any of the foregoing whether developed by us, by you and us jointly or by you alone during the conduct of the Merchant Facility Services.

## **28. CONFIDENTIALITY**

**28.1** As an operator of the Merchant Facility Services, you and your staff may receive or have access to Confidential Information. Confidential Information includes, but is not limited to, the following:

- a) personal Information' as defined by any privacy legislation or common law in your jurisdiction;
- b) information about customers of BSP, including the fact that they are customers of BSP of which you become aware as a consequence of providing the Merchant Facility Services;
- c) information and material concerning the training methods, systems and guides of BSP; or
- d) the Service Guides provided to you by us.

**28.2** You acknowledge and agree that you will:

- a) use or reproduce Confidential Information only for purposes under this Agreement;
- b) take all reasonable steps to maintain the confidentiality of the Confidential Information and to secure Confidential Information against theft, loss unauthorised use, modification, disclosure or other misuse;
- c) not disclose the Confidential Information to any person except where there is consent from the party of which the Confidential Information relates to, or where you are compelled by law;
- d) immediately notify us in the event that you become aware of any unauthorised access to, use, modification, disclosure or other act in relation to any Confidential Information which is not permitted; or
- e) deliver to the disclosing party or parties of which the Confidential Information relates to all documents and other materials in your possession or under your power or control which contain or refer to any Confidential Information of the disclosing party or parties of which the Confidential Information relates to on the earlier of:
  - i. Demand by the disclosing party or parties of which the Confidential Information relates to; or
  - ii. The time the documents and other materials are no longer required for the purposes of this Agreement.

## **29. ACCESS TO PREMISES**

BSP and its representatives shall be entitled at all times with or without notice to have access to the premises upon the provision of a valid BSP identification card, from which the BSP Agent Banking Service is or has been conducted or on which records relating to the BSP Agent Banking Service are located at any time and shall be entitled to examine any records in the possession or control of the operator of the Agent Banking Service pertaining to the BSP Agent Banking Service. You should ensure such access is granted.

## **30. CHANGE OF ADDRESS**

**30.1** You must notify us promptly of any changes in your name or your address. You can do this by writing to us or by transmitting by email to the address at the back of this document. You must continue to notify us of any changes for a period of 12 months after this Agreement is terminated for any reason.

**30.2** We will not be responsible for any errors or losses where we have not received adequate prior notice.

## **31. MEDIA AND ADVERTISING**

**31.1** We will supply you with the signs decals and other advertising material relating to the Transactions you can accept under this Agreement. You must:

- a) display the card supplied to you by us;
- b) only use advertising material supplied by us and in a way we agree to;
- c) stop using this material if we ask you or if this Agreement ends.

**31.2** You will exhibit and keep exhibited at the premises signs or notices which BSP considers necessary for the purpose of identifying the premises as a provider of Merchant Facility Services and shall keep displayed all material, notices, prospectuses, product disclosure statements or other printed matter which BSP reasonably requires.

**31.3** You shall not advertise or allow to be advertised the business or services of BSP in any manner whatsoever without the written consent of the BSP and shall not publish or broadcast any announcement in any way relating to the business or services of the BSP unless the same shall have been first submitted to and approved in writing by BSP.

**31.4** You will not advertise the services of other financial institutions at its premises or allow anyone else to do so without the prior consent of BSP.

**31.5** You authorise us to publish your name, address, telephone number, and email address and to use your logo/s in any of our correspondence, bulletins or publications

## **32. MARKETING**

**32.1** BSP and its related bodies corporate would like to be able to contact you, or send you information, regarding other products and services. If you do not wish to receive this information, you can:

- a) call us on the telephone number located at the end of this document;
- b) write to us at the address located at the end of this document;
- c) call in at any BSP branch.

**32.2** You do not need to do this if you have already told us you do not wish to receive information of this sort.

## **33. ONLINE GAMBLING**

You must not commence offering online gambling without first obtaining our prior written consent.

## **34. DEFAULT AND ENFORCEMENT EXPENSES**

You agree to pay on demand all legal fees (on a solicitor and own client basis) and liabilities incurred by us in connection with any default by you or in enforcing this Agreement by us.

## **35. SURVIVAL OF INDEMNITIES AND DISCLAIMERS OF LIABILITY**

**35.1** The indemnities in clause 22.3 continue after this Agreement ends or is terminated.

**35.2** Amounts payable under the indemnities in clause 22.3 are payable on demand.

**35.3** We are not liable for, and you release us from any liability or responsibility for any Invalid Transaction or losses or inconvenience you incur or those of a Customer or any other person if a Terminal is faulty.

## **36. GOVERNING RULES, LAWS AND REGULATIONS**

**36.1** The Agreement is governed by the law in force in the country, state or territory which is shown in the Letter of Offer.

**36.2** We can at any time, by giving you reasonable notice, impose or create rules and regulations.

## **37. THIRD PARTIES USED BY YOU**

You use any third party processing services at your own risk. We are not liable for any omissions, losses, claims, damages, costs including any consequential loss resulting from the acts or omissions of any third party.

## **38. YOUR INFORMATION**

**38.1** As well as our duties under any Privacy legislation, we are also bound by a duty to keep many details of your Merchant Agreement confidential. In some circumstances, we can release details when you agree:

- a) the law requires or permits us to do so;
- b) it protects our interest to do this;
- c) there is a public duty to do this.

**38.2** When you apply for Merchant Facility Services, the application form you complete contains information on how we use the information you give us and who we can give it to, as well as information relating to privacy issues. Please read the application form carefully.

**38.3** We can disclose information about termination of this Agreement under clause 26 of this Terms and Conditions

## **39. OUR CONSENT UNDER THESE TERMS AND CONDITIONS**

Any consent we may give under this Agreement, may be given conditionally or unconditionally or withhold it in our absolute discretion unless this agreement expressly indicates differently.

## **40. SEVERABILITY**

If any provision of this Agreement is held to be unenforceable, or invalid, for any reason, then:

- a) that provision is deemed to be modified to the extent required to remedy the unenforceability or invalidity; or
- b) if it is not possible to remedy the unenforceability or invalidity, that provision is to be severed from this Agreement, and the Agreement will otherwise remain in full force.

## **41. DISCLAIMER**

**41.1** This clause 41 is in addition to the exclusions and limitations of liability in clause 22. If our liability to you for the breach of any term, condition or warranty implied by law is capable of exclusion, it is excluded.

**41.2** We make no warranties in relation to the Services, including warranties as to the description, merchantability or fitness for purpose. We are not liable for any losses or inconvenience you suffer because any part of the Service or any equipment we or others supply is not capable of normal operation, fail or slowly processes information.

**41.3** We, our officers, agents, sub-contractors and contractors shall not be liable for any direct or indirect loss (including without limitation loss of profits), damage, injury arising from the supply or use of the Merchant Facility Services or any equipment we or others supply, or any act or omission (including negligence) of us. This clause is subject to any terms which are not capable of exclusion or limitation.

## Contact Details

### **BSP Financial Group Limited**

Tel: (675) 320 1212 or (675) 7030 1212

Email: [servicebsp@bsp.com.pg](mailto:servicebsp@bsp.com.pg)

Website: [www.bsp.com.pg](http://www.bsp.com.pg)

### **BSP Financial Group Limited, Fiji**

Tel: (679) 3214300 (Overseas callers)

Tel: 132 888 / 3314400 (Local calls)

E-mail: [bula@bsp.com.fj](mailto:bula@bsp.com.fj) / [customercare@bsp.com.fj](mailto:customercare@bsp.com.fj)

Website: [www.bsp.com.fj](http://www.bsp.com.fj)

### **Bank South Pacific Tonga Limited**

Tel: (676) 23-933

Fax: (676) 23-634

E-mail: [BSPTonga@bsp.com.pg](mailto:BSPTonga@bsp.com.pg)

Website: [www.bsp.to](http://www.bsp.to)

### **Bank South Pacific (Samoa) Limited**

Tel: (685) 20 000

Fax: (685) 22 848

Email: [BSPSamoa@bsp.com.pg](mailto:BSPSamoa@bsp.com.pg)

Website: [www.bsp.com.ws](http://www.bsp.com.ws)

### **BSP Financial Group Limited, Cook Islands**

Tel: (682) 22014

Fax: (682) 20802

Email: [BSPCookIslands@bsp.com.pg](mailto:BSPCookIslands@bsp.com.pg)

Website: [www.bsp.co.ck](http://www.bsp.co.ck)

### **Bank South Pacific (Vanuatu) Limited**

Tel: (678) 22084

Fax: (678) 24773

Email: [BSPVanuatu@bsp.com.pg](mailto:BSPVanuatu@bsp.com.pg)

Website: [www.bsp.co.vu](http://www.bsp.co.vu)

### **BSP Financial Group Limited, Solomon Islands**

Tel: (677) 21874

Fax: (677) 24674

Email: [servicebsp@bsp.com.sb](mailto:servicebsp@bsp.com.sb)

Website: [www.bsp.com.sb](http://www.bsp.com.sb)