

2004-04-11

SOUTH AFRICAN POST OFFICE AGREEMENT

entered into by and between –

SOUTH AFRICAN POST OFFICE LIMITED
(hereinafter referred to as the “**POST OFFICE**”)

and

CITY OF CAPE TOWN
(hereinafter referred to as the “**RECEIVER**”)

WHEREAS the **POST OFFICE** and the **RECEIVER** wish to enter into an agreement whereby the **POST OFFICE** will provide a Third Party Payment Service to the **RECEIVER** so that payments due to the **RECEIVER** may be made at the **POST OFFICE**.

AND WHEREAS the **POST OFFICE** participates in the **POST OFFICE** Post Link Systems.

AND WHEREAS the **POST OFFICE** and the **RECEIVER** wish to record the agreement between them in writing.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS –

PART 1 – GENERAL TERMS

1 DEFINITIONS

The following words and expressions shall have the meanings hereunder assigned them and cognate words and expressions will have their corresponding meanings, unless the context indicates to the contrary –

- 1.1 “**ACB**” means the Automated Clearing Bureau, being the South African Banks’ representative institution, which accepts input magnetic tape transactions for settlement between various account drawers and beneficiary payees.

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For The Standard Bank of South Africa Ltd
Reg. No. 62/00738/06
THIBAUT SQUARE BRANCH, CAPE TOWN

- 1.2 **"Confidential Information"** means in addition to the definition set out in the latest edition of the Oxford English Dictionary, and without prejudice to the generality of the expression, all information of any nature whatsoever disclosed by the parties hereto to each other, their legal counsel, agents, associates or representatives and relating to the **POST OFFICE** and the **RECEIVER**, whether orally, in writing or in software format, in relation to :
- 1.2.1 the business and affairs of the **POST OFFICE** and the **RECEIVER**;
- 1.2.2 all information relating to the **POST OFFICE** System, the software, trademarks, logos and all intellectual property rights relating thereto.
- 1.3 **"Day"** means any day other than a Sunday, or a Public Holiday as designated by legislation in the Republic of South Africa.
- 1.4 **"Third Party Payment"** means the software application/electronic payment system owned by the **Post Office** which facilitates the collection and switching of **RECEIVER** payments from the **Post Office** branches and the **Collector(s)** to the **RECEIVER** in accordance with the **RECEIVER's Technical Specification**.
- 1.5 **"Post Office Technical Specification"** means the technical specification and any amendments thereto from time to time to which the **RECEIVER** shall adhere and with which it shall comply, details whereof shall be furnished to the **RECEIVER** by the **POST OFFICE** prior to or on signature hereof and amendments thereto as soon as reasonably possible.
- 1.6 **"Post Office Receiver Number"** means a number or series of numbers allocated to the **RECEIVER** and reflected by it in accordance with the format specified in the **Post Office Receiver Technical Specifications**, and in terms of which it is described more fully.
- 1.7 **"Payment(s)"** means any payments, made using the **Third Party Payment System(s)**, but limited to account payments.
- 1.8 **"Receiver"** means a metropolitan municipality, established in terms of the Local Government : Municipal Structures Act, 1998, read with the Province of the Western Cape : Provincial Gazette 5588 dated 22 September 2000.
- 1.9 **"Receiver Agreement"** means this Agreement entered into by and between the **RECEIVER** and the **POST OFFICE** regulating the use and implementation of the **Third Party Payment System**.

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Handwritten signatures and initials.

1.10 **"Receiver Nominated Bank Accounts"** means –

BANK : ABSA Bank
BANK ACCOUNT NO : 4056584527
BRANCH : Public Sector
BRANCH CODE : 631609
ACCOUNT HOLDER : City of Cape Town,

the account to which must be credited all the payments envisaged in terms of clause 3.2 of this Agreement.

1.11 **"Transaction Data"** means such data as is described more fully in the **Post Office Receiver Technical Specifications**.

1.12 **"Post Office"** means the South African Post Office, registration number : 1991/005477/06, a company that provides a service to the Receiver to facilitate the collection of Receiver's payment ;

1.13 **"Post Office Control Account"** being part of the **Post Office System** means an internal **Post Office** account, on which is reflected all the Transaction Data from the **Post Office** branches and **Collector(s)**, and the amounts which must be credited via ACB to the **RECEIVER's Nominated Bank Account**.

1.14 **"Commencement Date"** shall mean the date referred to in clause 7.1.

1.15 **"Collector(s)"** means the various entities with whom the **Post Office** has contracted or will in the future contract by signing the **Post Office Collector Agreement**.

1.16 **"Collector Agreement"** means the Agreement entered into by and between its **Collector(s)** and the **POST OFFICE** regulating the use and implementation of the **Third Party Payment System**.

1.17 Words importing the singular shall include the plural and vice versa.

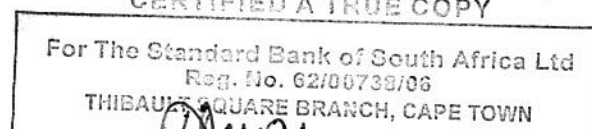
1.18 Words importing any one gender shall include any other gender, including the neuter, and vice versa.

2 OBLIGATIONS AND DUTIES OF THE RECEIVER

The **RECEIVER** hereby agrees and undertakes –

2.1 to use the **Third Party Payment System** to collect Payments ;

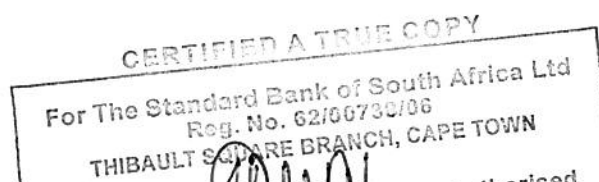
2.2 to comply with and adhere to the **Post Office Receiver Technical Specifications** and to bear any costs related directly thereto ;



- 2.3 to deal with **RECEIVER** customer queries and to advise the **RECEIVER's** customers not to raise queries with the **POST OFFICE**, but to direct such queries to the **RECEIVER** ;
- 2.4 should the **POST OFFICE** request the **RECEIVER** to reverse a Payment, which payment has in error been transferred via **ACB** to the **RECEIVER** (e.g. : that the error has arisen due to a technical problem or a duplication of **Transaction Data** resulting in the **RECEIVER** receiving a payment to which it is not entitled), the **RECEIVER** undertakes to forthwith investigate the payment concerned. If the **RECEIVER** is satisfied that an error has occurred it undertakes to refund the **POST OFFICE** by issuing a cheque or by electronic file transfer payment the amount of the erroneous payment within fourteen (14) days of written notification by the **POST OFFICE** ;
- X 2.5 to reimburse the **POST OFFICE** in respect of payments made by a **RECEIVER** customer using a credit or debit card the fees charged to the **POST OFFICE** by the supplier of the credit or debit card ;
- 2.6 to reimburse the **POST OFFICE** in respect of those cheques returned to the **POST OFFICE** by its banker by reason only of there being insufficient funds in the payees account, subject to the **POST OFFICE** providing the **RECEIVER** with a copy of both sides of the cheque. In respect of those cheques returned to the **POST OFFICE** by its banker for any reason other than there being insufficient funds in the payee account, the **RECEIVER** undertakes to process itself, the recovery of monies relating to such returned cheque. In addition to the extent that the **RECEIVER** is successful in recovering the money relating to such cheque, it will reimburse the **POST OFFICE**.
- 2.7 to deal with **RECEIVER** customer queries and to advise the **RECEIVER's** customers not to raise queries with any **Collector** or with the **POST OFFICE**, but to direct such queries to the **RECEIVER**.

3 METHOD OF PAYMENTS

- 3.1 Upon receiving the **Transaction Data**, the **POST OFFICE** shall consolidate same and transmit it to the **RECEIVER** in such manner and by such method as is elected by the **RECEIVER** in accordance with the manner and method specified by the **RECEIVER**.
- 3.2 The consolidated total of all **RECEIVER** payments reflected in the **Transaction Data** and collected by all the agents and the branches of the **POST OFFICE**, must be transferred each **Day**, by the **POST OFFICE** to the **RECEIVER** via **ACB** by crediting the **Receiver's Nominated Bank Account**.



- 3.3 The **RECEIVER** hereby agrees and undertakes to allow the **POST OFFICE** access to the **Receiver's Nominated Bank Account** via **ACB** in order to pass a credit of the consolidated total referred to in clauses 3.2.

4 COLLECTION FEE AND OTHER CHARGES

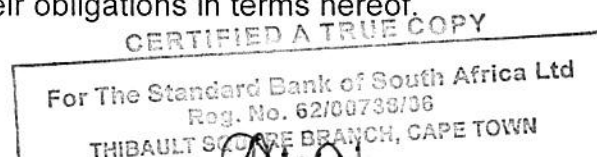
- X 4.1 The **RECEIVER** shall pay to the **POST OFFICE** a collection fee for each collected payment reflected in the **Transaction Data** and at the rate specified in Schedule 1 annexed hereto.
- X 4.2 The fee for each collected payment shall be consolidated and the charges due in terms of clause 4.1 above shall be consolidated and shall be paid to the **POST OFFICE** on a monthly basis upon a receipt of an invoice from the **POST OFFICE**.
- 4.3 For the purpose of reclaiming VAT, the **POST OFFICE** shall furnish the **RECEIVER** with a VAT invoice on the first **Day** of each month reflecting the total collection fees (including VAT) due by the **RECEIVER** to the **POST OFFICE**.
- 4.4 The collection fee referred to in clause 4.1 above shall be reviewed annually on the anniversary of the signing of this Agreement, and if necessary the collection fee shall then be adjusted by mutual written agreement between the parties, and a fresh Schedule 1 signed.

5 MARKETING

- 5.1 The parties may not use the others logo's without the other's written consent.

6 CONFIDENTIALITY

- 6.1 The parties acknowledge that all **Confidential Information** disclosed by them, their legal counsel, their associates or representatives during negotiations and discussions between the parties is private and confidential and as such the parties hereby undertake to treat/safeguard such **Confidential Information** subject to the provisions of the Promotion of Access to Information Act, 2 of 2000.
- 6.2 The parties shall at all times, unless otherwise agreed to in writing between the parties, hold the **Confidential Information** disclosed to them in strict confidence and shall use such **Confidential Information** only for such purpose and to the extent that it may be necessary for the parties to comply with their obligations in terms hereof.



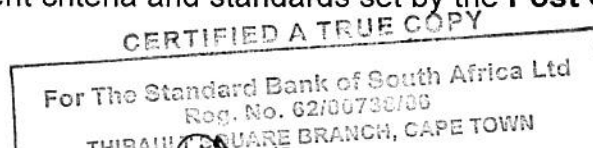
7 DURATION AND TERMINATION

- 7.1 This Agreement shall endure for a period of two years reckoned from the ~~3rd May 2004~~ whereafter it shall continue indefinitely upon **three calendar months** written notice of cancellation being furnished by one party to the other.

8 OBLIGATIONS AND DUTIES OF THE POST OFFICE

The **POST OFFICE** hereby agrees and undertakes –

- 8.1 to furnish the **RECEIVER** by no later than close of business on the 15th day of each month, with a consolidated report of all transactions that occurred in the preceding month, detailing *inter alia* –
- 8.1.1 details of **RECEIVER** Payments transmitted via ACB from the **POST OFFICE's Control Account** to the **Receiver's Nominated Bank Account** ;
 - 8.1.2 transaction volumes and transaction costs ;
 - 8.1.3 those aspects of the **Transaction Data** detailing consolidated data pertaining to all the previous month's transactions.
- 8.2 prior to signature of this Agreement to provide the **RECEIVER** with the **Post Office Receiver Technical Specifications** ;
- 8.3 to ensure that all **RECEIVER** payments collected by all the agents and the branches of the **POST OFFICE** shall be reflected in the transaction data and transferred to the **RECEIVER** within 24 hours of the **POST OFFICE** having receipted such payment. Transfer must be effected via the **ACB** by crediting the **Receiver's Nominated Bank Account** ;
- 8.4 to make available to the **RECEIVER** on a daily basis those aspects of the **Transaction Data** detailing payments received.
- 8.5 to pay the **RECEIVER** a returned cheque fee for each returned cheque processed by the **RECEIVER** by reason other than there being insufficient funds in the payees account, at the rate specified in Schedule 1 annexed hereto. This fee shall be paid to the **RECEIVER** on a monthly basis upon the receipt of an invoice from the **RECEIVER**. This fee shall be reviewed annually on the anniversary of the **Commencement Date** of this Agreement.
- 8.6 to ensure that all **Collectors** sign the **Post Office Collector Agreement** as approved by the **RECEIVER** and in so doing adhere to certain risk and management criteria and standards set by the **Post Office** ;



- 8.7 to notify the **RECEIVER** of all its existing **Collectors** prior to signature of this **Agreement** ;
- 8.8 to immediately terminate a **Post Office Collector Agreement** with any **Collector** that has been liquidated, voluntary or compulsory, and whether such liquidation is provisional or final ;
- 8.9 to only appoint those **Collectors** who have signed a **POST OFFICE Collector Agreement** and simultaneously to advise the **RECEIVER**.

9 NON-PAYMENT / LATE PAYMENTS

- 9.1 In the event, that for any reason whatsoever, the **POST OFFICE** is unable to deposit payments via **ACB** in terms of the provisions of this Agreement timeously or at all, the **POST OFFICE** shall be liable to the **RECEIVER** for such deposit together with interest on the said deposit calculated at the prime bank overdraft rate charged by the ABSA Bank Ltd from time to time plus 1% per annum reckoned from the **Day** the deposit should have been made until the **Day** on which it is made. Any such interest owing shall be calculated by the **RECEIVER** and deducted from the collection fee due by the **RECEIVER** to the **POST OFFICE** in terms of clause 4.1 above.
- 9.2 In the event that the **POST OFFICE** is unable to deposit Payments timeously, or at all, the **POST OFFICE** shall immediately upon becoming aware of this fact, notify the **RECEIVER** in writing thereof, together with a written explanation therefore.

It is specifically recorded and acknowledged by the **POST OFFICE** that this notification is essential as the **RECEIVER** might otherwise disconnect or discontinue services to the **RECEIVER** customers.

10 LIABILITY OF THE POST OFFICE

If the Post Office fails to comply with the provisions of clause 8.4 above due to negligence and/or fraud on the part of the **POST OFFICE**, it shall in addition to the interest penalty envisaged in terms of clause 9.1 above be liable for all reasonable direct damages suffered by the **RECEIVER** as a consequence of such negligence and/or fraud.

11 DATA TRANSFER TO THE RECEIVER

The cost of the telecommunication lines shall be borne by the **RECEIVER**.

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For The Standard Bank of South Africa Ltd
Reg. No. 62100738/36
THIBAUT SQUARE BRANCH, CAPE TOWN

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12 BREACH

- 12.1 Should either party hereto breach or fail to comply with any term or condition of this Agreement, then the party aggrieved thereby shall give the defaulting party written notice to rectify such a breach.
- 12.2 In the event of the defaulting party failing to rectify such a breach within fourteen (14) days of the dispatch of such notice, the aggrieved party shall be entitled to give written notice of termination of this Agreement to the other party. Commencement of the 14 days shall take effect upon dispatch of such notice to the other party.
- 12.3 Should either party repeatedly breach any of the terms and conditions of this Agreement in such a manner as to justify the aggrieved party in holding that the defaulting party's conduct is inconsistent with the defaulting party's intention to carry out the terms and conditions of this Agreement, then and in such event the aggrieved party shall without prejudice to its legal rights and remedies, be entitled to terminate this Agreement.
- 12.4 On terminating this Agreement, the aggrieved party will be entitled to claim and recover such damages as the aggrieved party may be able to prove that it has sustained.

13 TERMINATION

This Agreement shall terminate with immediate effect upon the happening of any of the following events :

- 13.1 If either party fails to rectify a breach of this Agreement as provided for in terms of Clause 12 ;
- 13.2 If either party takes a resolution to wind-up its operations ;
- 13.3 If either party commits an act of insolvency or is placed under final or provisional liquidation.

14 EXCLUSIVITY

- 14.1 The **Parties** shall not cede, assign, transfer or make over any of their rights, nor delegate any of their obligations, in terms of this Agreement to any third party without the prior written consent of the other party which may not be withheld unreasonably.

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For The Standard Bank of South Africa Ltd
Reg. No. 62/06738/06
THIBAUT SQUARE BRANCH, CAPE TOWN

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15 NON-WAIVER

The remission of any payment grant of any concession or condonation of any breach of the terms and conditions hereof, or any other act of relaxation or indulgence on the part of either party shall not in any way constitute or be deemed to be of a waiver by such party of its rights under this Agreement nor shall it constitute a novation hereof.

16 DOMICILIUM CITANDI ET EXECUTANDI

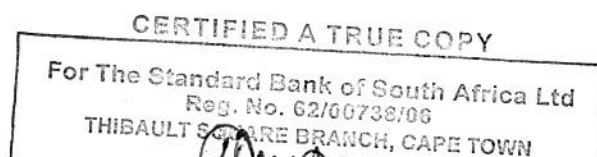
16.1 Each of the parties chooses *domicilium citandi et executandi* for the purposes of the giving of any notice, the serving of any legal process and for any purposes arising from this Agreement at their respective addresses set forth hereunder :

RECEIVER : The City of Cape Town
Civic Centre
12 Hertzog Boulevard
CAPE TOWN, 8001

THE POST OFFICE : The Chief Executive Officer
South African Post Office
497 Schubart Street
PRETORIA, 0002

16.2 Any notice to any party shall be addressed to it at its *domicilium* aforesaid and be sent either by pre-paid registered post or be delivered by hand. In the case of any notice :

- (a) Sent by pre-paid registered post, it shall be deemed to have been received, unless the contrary is proved, on the seventh day after posting ; and
- (b) Delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a business day or otherwise on the next following business day ;
- (c) Any party shall be entitled by notice in writing to the other, to change its *domicilium* to any other address within the Republic of South Africa, provided that the change shall become effective only fourteen (14) days after the service of the notice in question.



- (d) Any notice addressed to the **RECEIVER** shall be required to be addressed to the Director : Revenue to be deemed to have been effectively delivered or served.
- (e) Any notice addressed to the **POST OFFICE** shall be required to be addressed to the Company Secretary to be deemed to have been effectively delivered or served.

17 VIS MAJOR

Neither party shall be liable to the other for any prevention, suspension or postponement of its performance in terms of this Agreement where such prevention, suspension or postponement is due to any event of *vis major* (including but not limited to any act of God, flood, fire, earthquake, terrestrial or extraterrestrial interference, satellite malfunction, war, riot, insurrection, strike or act of any civil or military authority, or other cause of similar nature beyond the reasonable control of a party hereto).

If any such event *vis major* shall continue for a period of sixty consecutive days, or ninety consecutive days, in the aggregate in any one-year contract period during the terms of this Agreement, either party shall have the option thereupon to terminate this Agreement upon no less than ten days written notice to the other party.

In the event of such termination, neither party hereto shall have any further obligations hereunder to the other party, except for payments of any fees, other sums or other consideration past due hereunder and obligations of indemnification expressly contained herein.

18 DISPUTE RESOLUTION

The parties hereby consents in terms of section 45 of the Magistrate's Court Act No 32 of 1944 as amended to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 of the said Act, provided that either party may at its sole discretion, elect to institute such proceedings in the High Court.

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For The Standard Bank of South Africa Ltd
Reg. No. 62/00739/03
THIBAUT SQUARE BRANCH, CAPE TOWN





19 ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties and no Agreement at variance with the terms and conditions hereof shall be binding on the parties unless reduced to writing and signed by both parties.

20 COSTS

Each party shall bear their own costs incurred in the negotiations, preparation and settling of the terms of this Agreement.

21 THE POST OFFICE COLLECTOR AGREEMENT

The **RECEIVER** acknowledges that it is acquainted with the provisions of the **POST OFFICE Collector Agreement**.

SIGNED AT Pretoria THIS 06th DAY OF April 2004

AS WITNESSES:

1 [Signature]
2 [Signature]

[Signature]
SOUTH AFRICAN
POST OFFICE
LIMITED

SIGNED AT Cape Town THIS 06th DAY OF April 2004

AS WITNESSES :

1 [Signature]
2 [Signature]

[Signature]
CITY OF CAPE TOWN

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For The Standard Bank of South Africa Ltd
Reg. No. 62/00736/05
THIRIAULT SQUARE BRANCH, CAPE TOWN

SCHEDULE 1

Costs to be recovered from the Receiver

Collection Fee per account payment together with Switching fee	:	R3,92 inclusive of VAT and bank charges
Cash Handling Fee	:	maximum of 0.5%
Debit Card Commission	:	maximum of 1.75%
Visa and Master Card Commissions	:	maximum of 2.5%
Diners	:	maximum of 2.5%
Amex	:	maximum of 2.5%
Unibank	:	maximum of 2.5%

Costs to be recovered from the Post Office

Returned Cheque Fee	:	R125,00
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For The Standard Bank of South Africa Ltd
Reg. No. 62/06738/08
THIBAUT SQUARE BRANCH, CAPE TOWN

Authorised

Handwritten signatures and initials.