

2003-11-26

## RECEIVER AGREEMENT

entered into by and between —

**SHOPRITE CHECKERS (PTY) LTD**  
(hereinafter referred to as “SHOPRITE”)

and

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

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

**AND WHEREAS SHOPRITE** participates in the **SHOPRITE** Systems;

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

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS —**

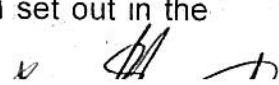
### PART 1 - GENERAL TERMS

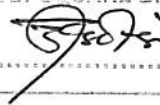
#### 1 DEFINITIONS

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.

1.2 “**Confidential Information**” means in addition to the definition set out in the



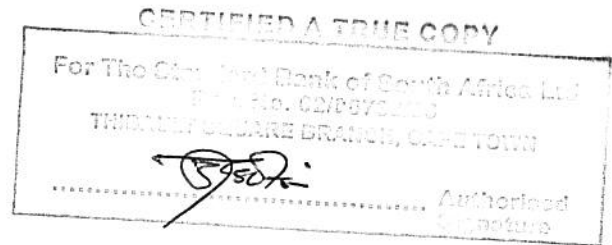

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Signature

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 **SHOPRITE** and the **RECEIVER**, whether orally, in writing or in software format, in relation to:

- 1.2.1 the business and affairs of **SHOPRITE** and the **RECEIVER**;
- 1.2.2 all information relating to the **SHOPRITE 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 System**" means the software application / electronic payment system owned by **SHOPRITE** which facilitates the collection and switching of **RECEIVER** payments from **Shoprite's** nominated bank account(s) to the **RECEIVER** and which is downloaded onto the Payment System in accordance with the **Shoprite Receiver Technical Specification**.
- 1.5 "**Shoprite 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 **SHOPRITE** prior to or on signature hereof and amendments thereto as soon as reasonably possible.
- 1.6 "**Shoprite 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 **Shoprite 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 **SHOPRITE** regulating the use and implementation of the **Third Party Payment System**.
- 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 **Shoprite Receiver Technical Specifications**.
- 1.12 **"SHOPRITE"** means Shoprite Checkers (Pty) Limited, registration number :1929/001/817/07, a company that provides a service to the Receiver to facilitate the collection of Receiver's payment;
- 1.13 **"SHOPRITE Control Account"** being part of the **Shoprite System** means an internal **SHOPRITE** account, on which is reflected all the Transaction Data and the amounts which must be credited via ACB to the **RECEIVER's Nominated Bank Account**.
- 1.14 Words importing the singular shall include the plural and vice versa.
- 1.15 Words importing any one gender shall include any other gender, including the neuter, and vice versa.

## 2 OBLIGATIONS AND DUTIES OF THE RECEIVER

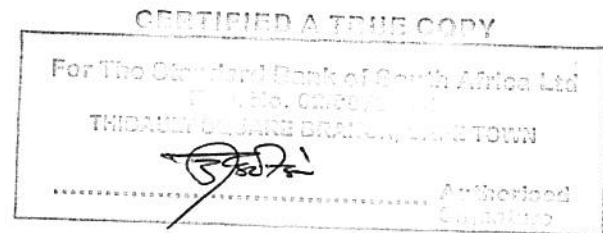
The **RECEIVER** hereby agrees and undertakes -

- 2.1 to use the **Third Party Payment System** to collect Payments;
- 2.2 to comply with and adhere to the **Shoprite 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 **SHOPRITE**, but to direct such queries to the **RECEIVER**;

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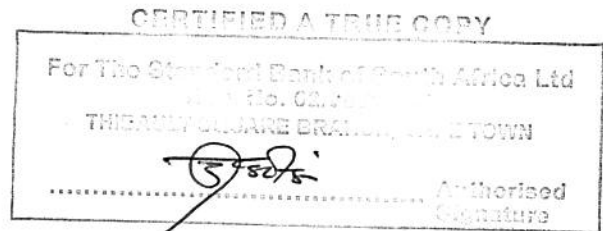
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- 2.4 should **SHOPRITE** request the **RECEIVER** to reverse a Payment, which Payment has in error been transferred via ACB to the **RECEIVER** (e.g.: that the error has arisen due to a technical problem or a duplication of **Transaction Data** resulting 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 **SHOPRITE** by issuing a cheque or by electronic file transfer payment the amount of the erroneous payment within thirty (30) days of written notification by **SHOPRITE**;
- 2.5 to reimburse **SHOPRITE** in respect of payments made by a **RECEIVER** customer using a credit or debit card the fees charged to **SHOPRITE** by the supplier of the credit or debit card. However, where the **RECEIVER's** customer tenders payment by using a credit or debit card, the **RECEIVER** shall only be liable for the fees up to an amount of those fees payable for an account payment of R2 500,00. Any fees incurred in respect of an account payment in excess of R2 500,00 shall be borne by the account holder;
- 2.6 to reimburse **SHOPRITE** in respect of those cheques returned to **SHOPRITE** by its banker by reason only of there being insufficient funds in the payees account, subject to **SHOPRITE** providing the **RECEIVER** with a copy of both sides of the cheque.

### 3 METHOD OF PAYMENTS

- 3.1 Upon receiving the **Transaction Data**, **SHOPRITE** 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 branches of **SHOPRITE**, must be transferred each Day, by **SHOPRITE** to the **RECEIVER** via **ACB** by crediting the **Receiver's Nominated Bank Account**.
- 3.3 The **RECEIVER** hereby agrees and undertakes to allow **SHOPRITE** access to the **Receiver's Nominated Bank Account** via **ACB** in order to pass a credit of the consolidated total referred to in clause 3.2 above.



#### 4 COLLECTION FEE AND OTHER CHARGES

- 4.1 The **RECEIVER** shall pay to **SHOPRITE** a collection fee for each collected payment reflected in the **Transaction Data** and at the rate specified in Schedule 1 annexed hereto.
- 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 **SHOPRITE** on a monthly basis upon a receipt of an invoice from **SHOPRITE**.
- 4.3 For the purpose of reclaiming VAT, **SHOPRITE** shall furnish the **RECEIVER** with a VAT invoice on the last Day of each month reflecting the total collection fees (including VAT) due by the **RECEIVER** to **SHOPRITE**.
- 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

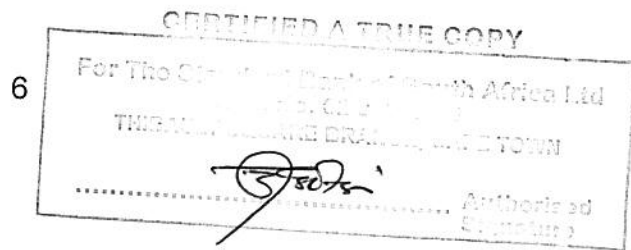
- 5.1 The parties may not use the others logo's without the other's consent.

#### 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 accord 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**

This Agreement shall endure for a period of two year's reckoned from the date of signature hereof, 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 SHOPRITE**

**SHOPRITE** hereby agrees and undertakes -

- 8.1 not to appoint any third party to act as an agent on **SHOPRITE's** behalf to carry out any of the services envisaged in terms of this Agreement.
- 8.2 to furnish the **RECEIVER** by no later than close of business on the 15<sup>th</sup> day of each month, with a consolidated report of all transactions that occurred in the preceding month, detailing *inter alia* -
  - 8.2.1 details of **RECEIVER** Payments transmitted via ACB from **SHOPRITE's Control Account** to the **Receiver's Nominated Bank Account**;
  - 8.2.2 transaction volumes and transaction costs;
  - 8.2.3 those aspects of the **Transaction Data** detailing consolidated data pertaining to all the previous month's transactions.
- 8.3 prior to signature of this Agreement to provide the **RECEIVER** with the **Shoprite Receiver Technical Specifications**;
- 8.4 to ensure that all **RECEIVER** payments collected by all the branches of **SHOPRITE** shall be reflected in the transaction data and transferred to the **RECEIVER** within 24 hours of **SHOPRITE** having receipted such payment. Transfer must be effected via the **ACB** by crediting the **Receiver's Nominated Bank Account**;
- 8.5 to make available to the **RECEIVER** on a daily basis those aspects of the **Transaction Data** detailing payments received.

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- 9.2 In the event that **SHOPRITE** is unable to deposit Payments timeously, or at all, **SHOPRITE** 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 **SHOPRITE** that this notification is essential as the **RECEIVER** might otherwise disconnect or discontinue services to the **RECEIVER** customers.

## 10

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

## 11

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

## 12

- 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. Such termination 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

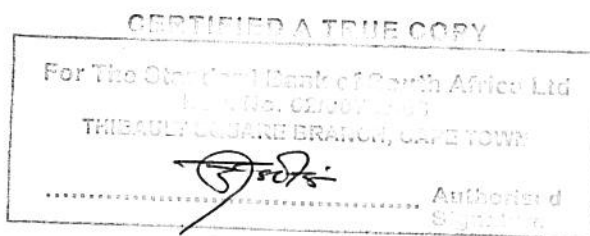
- 14.1 The **Parties** shall not cede, assign, transfer or make over any of their rights, nor delegate any of their obligations, in terms of this Agreement to any third party without the prior written consent of the other party.

### 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**

**SHOPRITE:** The Company Secretary  
SHOPRITE/CHECKERS (Pty) Ltd  
cnr William Dabs and Old Paarl Road  
**BRACKENFELL 7560**

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 **SHOPRITE** 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

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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 payment 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.

## 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.



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SIGNED AT Brackenfell THIS 30 DAY OF January ~~2003~~ <sup>2004</sup>

AS WITNESSES:

1 [Signature]  
2 [Signature]

[Signature]  
SHOPRITE  
P. Engelbrecht  
32492

SIGNED AT Milnerton THIS 30 DAY OF January ~~2003~~ <sup>2004</sup>

AS WITNESSES:

1 [Signature]  
2 [Signature]

[Signature]  
RECEIVER

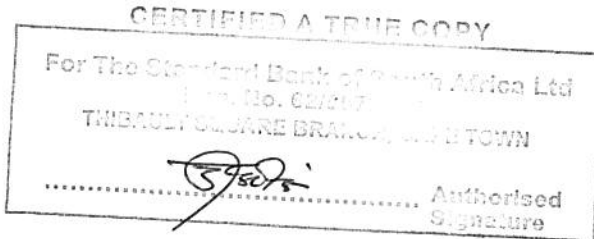
CERTIFIED A TRUE COPY  
For The Standard Bank of South Africa Ltd  
Reg. No. 62/007056/6  
TREASURY SQUARE BRANCH, CAPE TOWN  
[Signature]  
Authorised  
Signature

**SCHEDULE 1**

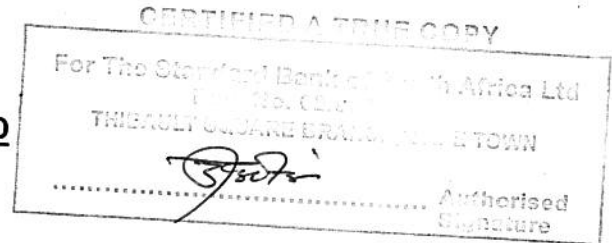
Fee per Account Payment : **R2,20 Ex VAT per Transaction**

**Bank Costs to be recovered from Receivers :**

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%



**SHOPRITE CHECKERS (PROPRIETARY) LIMITED**  
**REG. NO. 1929/001817/07**



**WRITTEN RESOLUTION PASSED BY THE DIRECTORS AT BRACKENFELL**

**ACCOUNT PAYMENT  
COLLECTION SERVICES –  
THE MUNICIPALITY OF  
CAPE TOWN:**

1. WHEREAS the Company has concluded agreements directly with certain institutions (such as Telkom, the Municipality and others) whereby it acts as a collector of payments made by third parties to such institutions and for the electronic transfer of funds so collected;
2. AND WHEREAS the Company has decided to contract with **The Municipality of Cape Town** (*hereinafter referred to as "the Municipality"*) to accept payments due to the Municipality of third party accounts at any of the Company's Money Market counters.
3. It is unanimously resolved that the Company will enter into an agreement with the Municipality in respect of the Third Party Payment System for two (2) years, effective upon signature thereof and will continue indefinitely until terminated upon three calendar months' written notice.
4. The Company's fee payable by the Municipality per transaction will be R2,20 excluding V.A.T. plus cash handling, credit or debit card fees for each transaction referred to in Schedule 1, i.e.

	%
▪ Cash Handling Fee	0.5
▪ Debit Card Commission	1.75
▪ Visa & Master Card Commissions	2.5
▪ Diners Club Card	2.5
▪ Amex	2.5
▪ Unibank	2.5